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Self-Regulation of Environmental Quality: Impact Analysis in California Local Government

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Recent revisions of guidelines for the preparation of environmental impact statements (EIS) issued by the Council on Environmental Quality have defined clear requirements as to what can be expected in EIS's from Federal agencies. However, such uniformity of procedure and approach has not been extended below the Federal level on either Federal agency requirements or individual State requirements. Further, while the guidelines may specify what is desired in EIS's, technical approaches to meeting these objectives may not always be available and universally acceptable.

As a part of its series of Socioeconomic Environmental Studies, the Environmental Protection Agency, Office of Research and Development, is conducting research whose objectives are to: 1) improve the technical quality of environmental impact analysis in the areas of Agency responsibility; 2) improve the ability of the Agency to provide substantive technical review of EIS's prepared by other agencies; and 3) improve the effectiveness of the use of environmental impact analysis in influencing decisionmaking at all governmental levels.

This publication is the fourth in a series of reports on environmental impact analysis requirements several State governments have instituted. This report describes implementation of the California law at the local level of government.

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SELF-REGULATION OF ENVIRONMENTAL QUALITY:
IMPACT ANALYSIS IN CALIFORNIA LOCAL GOVERNMENT

by

Arthur W. Jokela
Center for California Public Affairs
Claremont, California 91711

Contract No. 68 01 2963

Project Officer

Harold V. Kibby
Assessment and Criteria Development Division
Corvallis Environmental Research Laboratory
Corvallis, Oregon 97330

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF RESEARCH AND DEVELOPMENT
CORVALLIS ENVIRONMENTAL RESEARCH LABORATORY
CORVALLIS, OREGON 97330

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FOREWORD

The widespread use of environmental impact analysis as a means of achieving Federal agency decisionmaking responsive to environmental concerns was initiated by the passage of the National Environmental Policy Act of 1969. The Act required that Federal agencies prepare statements assessing the environmental impact of their major actions significantly affecting the human environment.

In subsequent years, Federal agencies developed procedures for the preparation of environmental impact statements, often requiring similar analyses and statements from local governments and the private sector as a requirement for the award of Federal permits or grants. In addition, some States adopted environmental impact statement requirements.

Recent revisions of guidelines for the preparation of Federal impact statements, issued by the Council on Environmental Quality, have defined clear requirements as to what can be expected in impact statements from Federal agencies. However, such uniformity of procedure and approach has not been extended below the Federal level on either Federal agency requirements or individual State requirements. Further, while the guidelines may specify what is desired in Federal impact statements, technical approaches to meeting these objectives may not always be available and universally acceptable.

As a part of its series of Socioeconomic Environmental Studies, the Environmental Protection Agency, Office of Research and Development, is conducting research whose objectives are to:

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--Improve the effectiveness of the use of environmental impact analysis in influencing decisionmaking at all governmental levels.

This publication is the fourth in a series of reports on environmental impact analysis requirements several State governments have instituted. The first two reports analyzed requirements of the various States. The third report provided a more detailed analysis of the environmental impact reporting program instituted in California, the most extensive of the State programs.[1] The present report describes implementation of the California law at the local level of government.

This series of studies is being conducted by Thaddeus C. Trzyna and Arthur W. Jokela and their associates at the Center for California Public Affairs (an affiliate of The Claremont Colleges, 226 West Foothill Boulevard, Claremont, California 91711) under contract to the Washington Environmental Research Center.

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Special thanks are due David Nielsen of the County of San Diego and Richard Hall of the County of Santa Clara, who on several occasions provided insights into works in progress in their areas. Neil Orloff of the Council on Environmental Quality staff generously provided an advance copy of his update on impact requirements in the states. Dennis A. O'Leary of Lowry and Associates kindly facilitated the study of wastewater planning processes.

The bulk of data base for the project was provided by respondents and patient interviewees in local government agencies. The discussion contained herein evolved by accretion and refinement over an extended period of time, beginning in 1970 during the author's collaboration with Robert L. Small in undertaking an exploratory environmental analysis program in San Diego County government. Dr. Lawrence J. Fogel of Decision Science, Inc., provided a stimulus by calling attention to Professor Beer's paper soon after its presentation. Numerous friends, colleagues, observers, and bystanders have wittingly and unwittingly shared in the subsequent process; specific sources are acknowledged where possible.

Occasions for presentation and discussion of portions of the work have been afforded in conferences sponsored by the Council on Environmental Quality, the University of California Extension at Berkeley, the University of Wisconsin at Madison, and the University of Southern California, and by several graduate classes at the School of Environmental Design, California State Polytechnic University, Pomona.

A "benchmark" discussion of the subject, specifically organized by the Center for the purpose, took place in Sacramento on July 9, 1974. Grateful acknowledgment for their participation is accorded to Arthur Bauer of the Senate Office of Research; Ray Belknap (private environmental planning consultant); Vivian Brown of the Association of Bay Area Governments; Charles Frank of the County of Sacramento; Richard Gutting of the Environmental Defense Fund; Richard Hall; Norman Hill of the Office of the Secretary for Resources; Stephen Hogg of the County of Fresno; William Kaiser of the League of California Cities; Harold Kibby and Edwin Royce of the EPA Washington Environmental Research Center; Arthur Letter of the San Diego County Comprehensive Planning Organization; Larry Moss of the Sierra Club (now Deputy Secretary for Resources, State of California); Neil Orloff; Deputy Attorney General Louise Renne; Fred Silva of the State Office of Planning and Research; Robert L. Small; Thaddeus Trzyna; Paul Smith of Amfac Mortgage Company; Eugene Varanini and Thomas Willoughby of the State Assembly staff; and John Wise of EPA Region IX.

The support of the Environmental Protection Agency, and the assistance given by Harold V. Kibby and Edwin B. Royce of EPA's Office of Research and Development, is gratefully appreciated. All errors of fact, faults of judgment, and omissions are the responsibility of the author.

SECTION I

INTRODUCTION

The purpose of this report is to discuss the diverse management approaches local agencies have taken in response to the California Environmental Quality Act of 1970 (CEQA),[2] and to comment on the implications of this program for the implementation of other State- and Federally-mandated environmental programs, particularly the Clean Water Grants Program of Public Law 92-500.

CEQA requires State and local agencies to prepare an environmental impact report (EIR) on any project "which may have a significant effect on the environment." It is patterned after the National Environmental Policy Act of 1969 (NEPA), which applies only to Federal actions.

The early stages of evolution of governmental responses to CEQA have been described in the preceding report, which was concerned primarily with the legislative and administrative history of the Act. Of particular significance was the famous Friends of Mammoth decision of the State Supreme Court in September 1972, which ruled that the Act applied to the permit-granting activities of agencies of local government. Prior to that time State and local agencies, for the most part, avoided compliance with the Act, or minimized their response to it. After Mammoth, a rapid shift in public attitude toward the Act occurred; and throughout California, local government moved to comply with the new interpretation of the law—developing procedures for EIR preparation and processing, and designating or hiring technical staff to do the work.

While local governments moved to implement Mammoth, a major legislative effort was undertaken in Sacramento which culminated in the passage of Assembly Bill 889 (AB889) in December 1972. This bill passed as an emergency measure and became law immediately, though it provided a 120-day moratorium for full implementation by local agencies. AB889 clarified and strengthened the Act, reaffirming its applicability to the granting of permits by local government.

The Mammoth case, the concurrent general election campaign (involving Proposition 20, the State Coastal Initiative[3]) and State and local efforts to respond all generated a great deal of public visibility for environmental laws, and considerable interest in the local impact analysis concept.

Activist managers, politicians, and citizens--some of whom may previously have been aware of CEQA's possibilities--now had a mandate to press their local government agencies to take the act seriously. Some agencies moved rapidly to integrate the EIR process into management activies. The broad majority took what amount to protective steps, trying the avoid potential litigation under the act. In some localities, there was active antagonism toward the act, which was regarded as an effort by "outside" environmentalists to stop local development. The result of these and other differences among local communities is a wide range of roles for the act in local government, and a number of divergent approaches to EIR management, described in the earlier report.[4]

Because of the very active administration of the act in many localities, and the uniform requirement in all local government to make environmental considerations "the guiding criterion in public decisions,"[5] California goes well beyond other states in the pervasiveness of its impact program at the local level of government. Twenty-one other States have adopted some form of environmental impact assessment requirement; most are restricted to specialized purposes, such as roads or utilities, or are restricted in application to state agencies only. The programs in other states are described in the first and second reports in this series;[6] they are summarized and updated in Appendix E.

Through its application to permit-granting on private projects, CEQA particularly infuses land use control activies, a principal concern of local governments (and the major program area in which local agencies affect their environments). The effect of CEQA is to make "private" land uses more public.

Land use provides the basis for other forms of pollution, and it has therefore been a principal target of state and national environmental legislation in recent years. Unlike most companion land use laws imposed on local government, CEQA entails little external control, either in the form of specified management process or in the form of direct regulation by State or Federal agencies. It does, however, encourage monitoring of agency actions by other local agencies and by the public, through procedures of notification and review.

As a consequence, the EIR process in local government in California is evolving as a medium for local self-regulation of environmental impacts, particularly where it is most actively supported locally.

CEQA provides interesting and potentially important illustrations of an approach to local self-implementation of State policy and regulatory programs.

The present report will discuss conditions that have affected, and have been affected by the EIR process during the evolution of CEQA. Emphasis will be placed on the milieu of activities surrounding CEQA; on the structural and political processes relating to its implementation; and on the indirect effects, costs, and benefits that result from the forms of its use. Emphasis furthermore is upon the more positive aspects of the EIR experience in California. Comparatively little attention is given to the direct effect of the EIR upon individual project decisions, to the "police action" needed to require performance by resistant agencies, or to the technical performance of local government in response to CEQA.

California is in many ways a model, on a more intensive scale, of the U.S. as a whole. Diversity in local attitudes toward development is extreme; and there is wide variation in physical environment and resources, economic conditions, administrative traditions, and general political culture.[7] In general, the pattern of pollution controls and land use measures here has preceded the nation as a whole through State legislation. Particularly in air and water quality regulation, California has served as a large scale "laboratory" for national measures.[8] Experience here will be of use to other states in their further development of processes of local environmental management.

This report is based on interviews and correspondence with State, Federal and local officials, citizen environmentalists, consultants, attorneys, and development interests throughout California; review of published material; review of certain administrative and legislative files and documents; and participation in several conferences. The project was completed in April 1975, and revised with additions in June 1975.

A study parallel to this one is being carried out by the California State Legislature, through a task force and consultant team reporting to the Assembly Committee on Local Government. Emphasis in the Assembly study is upon the technical effectiveness of the EIR process in its various forms, as compared to the emphasis here upon the more indirect management process roles of the EIR. The legislative study is scheduled to report in September 1975; it is intended to provide a basis for hearings and a general legislative review of CEQA.[9]

SECTION II

CONCLUSIONS

1. The California Environmental Quality Act (CEQA) is not simply a project review requirement; it was designed to be, and has evolved as a program of governmental reform and of process change. By expanding the scope of every local government agency to include quality of life considerations, the Legislature in effect issued a "mandate for innovation." Considerable change has occurred, and agencies now have an improved basis for mutual cooperation.

2. The environmental impact report (EIR) program serves as a monitoring framework through which the public is enabled to stimulate concern among public agencies for the policy intent of the law; and interpretation and enforcement of policy are provided by the courts.

3. The EIR has provided an educational medium for citizens, elected officials and developers--but particularly for governmental staff and consultants; two years of intensive, mutual training of natural scientists and public administrators directly involved in the EIR process has provided the State with a cadre of environmentally-oriented professionals, who now form a network of mutual contacts within government, private industry, and citizen-based organizations.

4. Widespread change is now taking place in the EIR process--and more broadly in the environmental control and planning processes of local government--as a result of accumulating information and experience.

5. Localities are highly diverse in their management processes, and in the rates of change of those processes; where there is active political support, administrators may be aggressive in modeling the EIR program to fit into a locally-adapted system of regulatory controls; elsewhere it may serve as little more than a pro forma "add-on" to the traditional general plan and zoning requirements imposed by the State.

6. The future of the EIR depends substantially on the future of State policy toward growth control, land use management, and State-level planning; it also depends to a strong degree on whether solutions can be found to several institutional and technical problems that have led to repetitive analyses of similar projects, and to "paper overkill."

7. Cost of the process is substantial, though still small in relationship to the total cost of professional and governmental services for average development projects; direct cost should decrease with time, with better understanding, and with more data. Projects are increasingly designed to avoid environmental damage in order to bypass the controls; and the EIR is converging in diverse ways with traditional planning and regulation.

8. EPA's Clean Water Grants program also suffers from a "paper overkill" problem due to administrators requesting, for institutional reasons, more documentation than may be required for public dialogue about the issues; in this case the problem is compounded by excessive centralization of administrative review within the State and Federal agencies themselves.

SECTION III

RECOMMENDATIONS

1. The State and Federal governments should recognize that leadership toward development of integrated forms of environmental management (including land use control) is now evolving, on a case-by-case basis, from the local level of government. Localities are diverse; therefore local systems of self-regulation may be the best (and perhaps the only) means of competent management--subject to policy overview by citizens, and process management oversight by State and Federal agencies.

2. Progressive localities should be regarded by the State as experiments, in the same sense that California serves the nation as a laboratory for environmental control. There are excellent local examples available of public as well as private initiative in environmental planning; these should be observed and commended by the State, and advertised to other localities.

3. Greater conscious effort should be made to encourage and utilize the competence of citizen-based organizations in overseeing agency uses of environmental law. Interlinking of such groups now forms a fast-acting, statewide, unofficial communications network that could be of more direct use to government in responding to environmental issues. Consideration should be given, for example, to further "professionalizing" the review of plans, programs, and impact statements by public non-governmental organizations as well as by public agencies, passing through the review costs to the originating agency or the applicant.

4. Particular attention should be given in EPA's Clean Water Grants Program to increased involvement of non-specialists in local agency staff work and local program review. The public role is now "sanitized" in a public hearing format, as it was for local land use issues in California prior to CEQA. Dialogue about real needs of local communities is lacking, as is ongoing attention to the policies and goals of P.L. 92-500. These could be improved by stimulating and supporting competent non-governmental public organizations; the result could be a lessening of the load of program review paperwork in EPA's Regional Offices.

5. Specific examples of local practice under CEQA should be studied by EPA and the State for further clues to the means of consolidating the many forms of Federal and State review, and of delegating such reviews to the local level. The particular case of Santa Clara County is instructive; self-analysis subject to public review and central agency (County) review is now being asked of local public agencies (cities) as well as of private enterprise (developers). And it appears to be working.

6. Local agencies need time to operate under CEQA, and under the many other environmental and planning requirements of State and Federal government. Homogenizing the requirements, or imposing structure in

arbitrary ways could be counterproductive; so could rigid enforcement, since there is "more than enough law" for any individual locality to deal with completely at the present time. Attention should instead be given to encouraging the best, monitoring the rest, and "bringing up the rear"--seeing to it that every locality is doing something to get its environmental house in order, and is gaining needed experience in planning for and managing environmental quality.

7. Minor specific changes in CEQA may be useful to overcome some of the "legalistic" constraints that add unnecessarily to procedures and to documentation requirements. Two suggestions offered are the inclusion of a policy statement in CEQA favoring minimization of requirements where possible; and a change to allow the "pass-through" of the costs for procedures leading to a "Negative Declaration," and not only for those that require a full EIR.

SECTION IV

CEQA AS AN EXPERIMENT IN GOVERNMENTAL REFORM

Discussion in California today about the future of CEQA focuses predominantly on the environmental impact report (EIR) and its effectiveness (or lack of effectiveness) in influencing decisions on specific projects.

This emphasis tends to overlook a broader intent of the Legislature in enacting CEQA--the intent to improve governmental management processes; and it reflects a similar situation observed by the Council on Environmental Quality (CEQ) in an analysis in 1972 entitled "NEPA: Reform in Government Decisionmaking":

> Although much of the public discussion of NEPA has revolved around the environmental impact statement procedure of section 102(2)(C), NEPA's substantive thrust cannot be overlooked. The primary purpose of Congress in enacting NEPA was to establish a Federal policy in favor of protecting and restoring the environment.[10]

The environmental impact statement (EIS) requirement was almost an afterthought in the enactment of NEPA.[11] It was added as an "action-forcing" procedure whose purpose was to direct all Federal agencies "to interpret and administer their authorities in concert with the new environmental policy,[12] thus assuring that the policy statement would be more than a hollow utterance. The overall effect of Section 102 and other provisions of the Act together was to

> tell the agencies to add a new criterion--effect on the environment--to those against which they have traditionally tested their actions. The far-reaching result is that agencies whose statutory mandates previously did not call for attention to the environmental effects of their actions are now required to take those effects into account. And agencies whose mandates previously directed their attention only to certain facets of the environment now have a responsibility as broad as the environmental policy declared in NEPA.[13]

According to the CEQ analysis there is implicit in the Act a Congressional "mandate for innovation," informing Federal agencies of an "affirmative responsibility of the Government to anticipate environmental problems and to devise ways of solving them...."[14]

The California Act similarly contains an implied mandate for change. A great deal of innovation in government has occurred that may be ascribed to this stimulus.[15]

IMPACT OF NEPA AND CEOA ON GOVERNMENT PROCESSES

The California Legislature followed the NEPA model very closely in enacting CEQA in its original form in 1970.[16] The two laws hold in common a number of features in their subsequent histories. A most important difference in the two histories is that CEQA was substantially refined and strengthened late in 1972, as a consequence of the famous *Friends of Mammoth* decision of the State Supreme Court.[17] NEPA has remained unchanged since it was signed on January 1, 1970.

Because of the similarities between NEPA and CEQA, and because of the comparative lack of analysis of CEQA from a policy point of view, it is convenient to review the Federal experience with NEPA's role as a policy instrument and a management tool as a basis for understanding CEQA's overall performance.

A general overview of indirect governmental reform benefits to be derived from CEQA can be found in CEQ's conclusions about the reform role performed by NEPA, an analysis worthy of extensive quotation here, because of its direct analogy to the "unsung virtues" of CEQA today.

> In the two and a half years since its enactment, NEPA has gone far toward fulfilling its promise as one of the major pieces of governmental reform legislation in decades. It has had at least five clearly beneficial effects on the Federal Government.
>
> First, it is a major step in bringing national policies in line with modern concerns for the quality of life. For the first time, maintaining environmental quality is acknowledged to be "the continuing responsibility of the Federal Government." Each agency has had its horizon broadened to include not only its own parochial concerns but also the need to "assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings."
>
> Second, the 102 process provides a systematic way for the Government to deal with complex problems that cut across the responsibilities of several agencies. Many of the modern problems faced by the Government are inherently complex and are beyond the responsibility of a single agency. In the past, different agencies have often responded to these problems in a piecemeal, uncoordinated fashion, largely because of the lack of a mechanism for shaping comprehensive policy. By forcing interagency consultation and attention to a broad range of effects and alternatives, section 102 fosters more sophisticated Government decisionmaking. The 102 process uncovers the need for more comprehensive policies and programs in areas such as energy and transportation. Thus it is a catalyst for more sensible policy formulation and program development.

> Third, the 102 process has opened a broad range of Federal Government activities to public scrutiny and participation for the first time. Although many agency procedures were formerly closed, the agencies are now required to explain their decisions when significant environmental values are concerned. A written study of environmental effects, including an analysis of available alternatives, must be made available to the President, the Congress, and the public before an agency acts. The public in turn has an opportunity to evaluate and comment on the agency's analysis. This new element of public participation should contribute to more careful and conscientious decisionmaking.
>
> Fourth, agencies whose personnel have reflected a narrow focus of concerns are being required now to supplement their staffs with persons of different backgrounds relevant to environmental issues. NEPA's required "interdisciplinary approach" means that personnel must be hired who bring not only new skills but a fresh viewpoint into the agencies. Over time, this influx should lead to sharper questioning of traditional assumptions within the agencies. Out of it should emerge an institutional viewpoint that is more sympathetic to environmental values.
>
> Fifth, NEPA's initiatives are enforceable in Federal court by citizen suit. This keeps each of these requirements from being an empty exhortation. What NEPA requires of the agencies is often difficult and uncomfortable. It is only natural that agencies are sometimes reluctant to question accepted goals and to do the work demanded by the 102 process. The willingness of citizens to sue to vindicate NEPA and the vigilance of the courts in enforcing the Act help to ensure that the agencies take their new tasks seriously.[18]

In general, California's experience with CEQA repeats these points, as further discussion in this report will indicate. A general statement from a subjective point of view, similar to the following, may also be made with regard to CEQA:

> NEPA has had a positive effect on Government decisions, although it is difficult to assess accurately the size of this impact. The examples already listed of projects and programs improved by NEPA provide little feel for NEPA's effect on the thousands of other decisions that make up the agencies' daily workload. The substantial number of impact statements filed with the Council is a sign that many agencies are responding to the Act. But the best indication available at this juncture is probably the subjective impressions of those who work with the agencies on environmental matters on a close, daily basis--the Congressional committees that oversee the Act,

> the environmental groups, the Council on Environmental Quality, and the Environmental Protection Agency. For its part, the Council's sustained contact with agency actions under NEPA leads it to believe that desirable changes are in fact underway in the Federal bureaucracy. There is still much room for improvement. Not all agencies are successfully identifying actions subject to 102 statements. Statements are sometimes prepared too late to have a real role in decisionmaking. Viewpoints and practices are changing more quickly in some agencies than others. But the Federal Government, at the deliberate pace characteristic of large institutions, is falling into step with the Nation's new environmental consciousness expressed in NEPA.[19]

Viewpoints and practices are changing rapidly in California today. A full evaluation of CEQA, like the Council's evaluation of NEPA, should take these changes into account--particularly in view of the significant part played by policy in the enactment of both laws, and in view of the continuing importance of policy statements in the interpretation of both Acts by the courts.

IMPORTANCE OF CEQA'S POLICY STATEMENTS

An important feature of the effectiveness of CEQA is that the policy declarations themselves are enforceable, and hence have become emplaced into the activities of government officers in deciding individual issues and in designing governmental processes. The linkage between the policy statements and the details of government operation occurs primarily through CEQA case law.

An unusual feature of CEQA is that, like NEPA but unlike the usual administrative statute, interpretation of its intent has emerged predominantly from court cases rather than from analysis by administrators. Guidelines for CEQA have been forthcoming from the State Administration, but they have been based substantially on case law and on solicited comments, rather than on administrative analysis. Reliance by the State Administration on such "outside" sources has been even greater than by the Federal administration operating under NEPA, since there is no State analog of the Council on Environmental Quality. Instead, a fraction of the time of one individual in the Office of the Secretary for Resources, Norman Hill, has been devoted to the combined tasks of guideline maintenance and publication of the EIR Monitor.[20]

The case law of CEQA has emerged substantially from citizen suits, a high proportion of which have been initiated by individuals and organizations intent on protecting or enhancing the environment--sympathies that are articulated in the policy sections of CEQA.

Courts have shown a willingness to look closely at the policy statements of the Act as a guide to interpreting CEQA's legislative intent--and in determining whether local administrators have shown "good faith" in observing that intent in their procedures and documentation. This is an important continuing theme of litigation under CEQA as well as NEPA. The Friends of Mammoth decision contains an often-quoted statement (paraphrasing a leading Federal case):

> The duty of the judiciary ... is to assure that important environmental purposes, heralded in legislative halls, are not lost or misdirected in the vast hallways of administrative bureaucracy.[21]

Elsewhere the same opinion states:

> It is undisputed that the Legislature intended that environmental considerations play a significant role in governmental decision-making (see sections 21000, 21001) and that such an intent was not to be effected by vague or illusory assurances by state and local entities that the effect of a project on the environment had been "taken into consideration."[22]

The policy statements were significantly strengthened in the passage of AB 889. The wording was clarified and made more definite; this is important in that the revised declarations are even more capable of interpretation and enforcement by the courts. Thus, where NEPA enjoins the government to "use all practicable means and measures ... in a manner calculated to foster and promote the general welfare," the State Legislature declares the policy of the State to "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the State." Where NEPA says "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations," CEQA says "Prevent the elimination of fish or wildlife species due to man's activities, ... and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history."

For reference, the policy declarations of both acts are reproduced in Appendices A and B.

STRONGER THAN NEPA

As a result of these changes, CEQA is a significantly stronger environmental law than NEPA. The California State Attorney General has argued in the case of Burger v. Mendocino County that CEQA, contrary to Federal law under NEPA, now imposes a duty upon decisionmakers to decide issues in favor of the environment, based on findings of the EIR.[23] In Bozung v. LAFCO, an important post-AB 889 case cited by the Attorney General, the court held that "... the purpose of CEQA is not to generate paper but to compel government at all levels to make decisions with environmental consequences in mind." (emphasis supplied by the Attorney General.[24])

The issue of duty was not resolved in Burger. A later case indicates that CEQA "...requires decision makers to assign greater priorities to environmental values than to economic needs."[25]

Litigation, or the threat of litigation, continues to be a consideration to local decisionmakers and administrators in regard to the EIR process. Perhaps more important in the day-to-day operations of government, however, is the simple awareness that the cases are to be taken seriously as a guide to agency activities, particularly if there is an activist public at hand to maintain an active, ongoing awareness of the law. The operational effect of the law is likely to be indirect, taking the form, for example, of advice of legal counsel to developers or local agency officials regarding the means of avoiding CEQA litigation.

The importance of CEQA's policy declarations is thus, in a sense, "hidden" in the case law. It is not likely to be found in the EIR documents themselves, and it may not be apparent to policymakers, administrators, or interested citizens, who all may be inclined to assume the policies represent only "motherhood" statements of the Legislature's good wishes.

Because of the case law and the available threat of litigation, CEQA in essence offers citizens a monitoring framework, which can require each individual action, plan, and program of local government to test itself (directly or indirectly) against the policy declarations or risk having a court perform the same test.

A danger that derives from this situation, on the other hand, is that cases can be (and many are) decided on the basis of technicalities. These may include irregularities such as the neglect of certain (possibly irrelevant) points in the EIR; improper conditions of public notice, or failure to file official notice of completion of the EIR. Emphasis on such points contributes significantly to problems of "creeping rigidity" of the process, and to a growing feeling among developers of an "overkill" of requirements for individual projects; there is now a common impression throughout the State that too much paper is generated by the process.

The City of Irvine is at present defendant in a citizens suit that charges the City gave inadequate consideration to housing needs of workers in a proposed industrial development. A consequence of the suit has been insistence by the City Attorney upon "legally adequate EIRs" in matters that earlier may have been spared full analysis.[26] Similar problems occur in other jurisdictions due to excessively close reading of cases by legal counsel, or of State Guidelines by administrators.

NEED FOR A BALANCING "INFRASTRUCTURE"

While confrontation, often in court, has been a major means of resolving conflict under CEQA, there is also a great deal of dialogue, and considerable movement to establish citizen-based organizations capable of carrying on sustained action in quality-of-life issues.

Gunnar Myrdal observed in 1962 that the lack of such a "balancing infrastructure" of citizen-oriented institutions has in the past been a major shortcoming of American society:

> ...a great deal of what in some other advanced countries can be safely delegated to the organs of local self-government, and be a matter of co-operation and bargaining between the various organizations in a well-balanced institutional infrastructure, will in America have to be effected by the direct control of central and state governments and their agencies.
>
> Meanwhile, whatever can be done to strengthen popular participation and organizational activity at these lower levels should be considered a matter of urgency.

On the positive side, Myrdal points also to

> the prevalence, on the other hand, of a much more intensive participation than elsewhere in the Western world of a few, and to the fact that relatively much of this participation is unselfish and idealistic to an extent that is also more or less unique.[27]

The active few in California society have been having their "day in court" on environmental matters in recent years. However, if the public desire for a high-quality environment--as reflected in the CEQA policy statements--is genuine, and if the "overkill" problem is of serious concern to the Legislature in the further implementation of CEQA, then Myrdal's analysis suggests the problem of CEQA reform at present is not so much "what to do with the EIR" as it is how to develop better and more widespread dialogue in pursuit of the policy intent of the Act.

FAILURE OF LOCAL DIALOGUE: SOME EXAMPLES

In places where dialogue is lacking--and where there is also an absence of its substitute of threat and confrontation--the Act and its implementing device, the EIR, are likely to be ineffective and redundant.

In some localities there is simply no environmentalist constituency present. In the City of Industry, which has a very large tax base but a population of under a thousand, and a City staff of only three persons, the EIR process is managed for the City by a private engineering firm. The firm also serves as the City Engineer and as the City's EIR consultant. A staff member of the firm stated after one-half year of operation that the process had not been particularly useful in making decisions; on the other hand, they had not had any problems with it because "nobody has ever shown up at one of our hearings."[28]

In a similar vein there are situations where the environmentalists may be well organized and effective, but are very limited in their capacity to operate in comparison to government and the development industry. Their attentions tend to focus on issues where the impacts are most immediate and most obvious.

In Orange County, a major sewer project involving 24,000 feet of pipe of up to 81 inches in diameter was found by EPA to have no significant impact on the environment; a "negative declaration" was filed after circulation and review of an "Environmental Appraisal" document similar in content to a formal impact analysis. Government agencies gave little review response, and there was no evidence of public participation. The Environmental Coalition of Orange County, a coordinating coalition of 26 environmental and civic organizations, is overwhelmed by a very large number of development project proposals. They have established criteria for critically evaluating a project, including:

- whether or not the nature of the project is such that it involves a precedent setting issue;
- whether or not the project will generate a regionwide impact.

The sewer project apparently was judged by this group to be a routine measure, or a fait accompli, and no response was given to the environmental document.[29]

In a similar situation in the East Bay Municipal Utility District (EBMUD), an environmental assessment was prepared as a routine "add-on" in a consulting engineer's report on a proposed improvement of a large sewage treatment plant. No public hearings were held, and government agencies gave little review response. Despite the high level of environmental awareness in the area, no citizen request was filed with EPA that an EIS be prepared. The State Air Resources Board and the Association of Bay Area Governments both noted the project had implications on a large scale for land use and air quality. Yet no significant alternatives were considered, despite the major commitment involved of upgrading an 85 million gallon per day primary treatment plant to secondary treatment for an average projected daily flow of 120 million gallons. A Negative Declaration was filed by EPA.[30]

In San Diego County, a voluminous EIR document was prepared by the County Water Authority analyzing alternative approaches to filtering the water of the San Diego Aqueduct and distributing the treated water.[31] The project has major implications for the future cost of water, and for the future economic feasibility of certain types of agriculture and other major consumptive uses. Yet the City of San Diego was the only government agency to respond to the EIR; no citizens groups responded, although the area is comparatively sophisticated and well organized for this purpose. One influential environmentalist commented the report and the project were simply "too much to cope with in relation to all the other priorities."[32] The impression given the Water Authority by the lack of response, however, was that the EIR must have done a good job of explaining the project plan.[33]

In some circumstances, dialogue can be forestalled because public participation is viewed with suspicion by government. One city official noted that "in some instances (the EIR) has been used as a delay tactic by those who opposed a particular project which was considered desirable by the planning staff, site designers, planning commission, and city Council."[34] This is not an unusual sympathy; it may at times be justified. Opposition to development may sometimes simply express anti-growth sympathies, or it may be for private reasons under the guise of "environmentalism."

The Planning Director of a large county in central California noted (at an early stage of implementing CEQA) that opportunities to work with private developers on ways to improve their designs or their approaches to site utilization had definitely improved as a result of the Act, but "as a planning agency only. The political arm is still somewhat concerned that Big Brother is taking over local government. Which is happening." As a tool for decisionmakers, however, "it has been a detriment. Actually is a hindrance ... because of overzealous so-called 'environmentalists' which are in fact 'no growthers'."[35] He further commented: "Developers generally believe [the EIR] will eventually blow away, or that if they criticize the staff enough, political pressure will solve the problem."

In the absence of active local dialogue about environmental quality and about specific issues addressed in EIRs, the role of the documents themselves can be limited, contributing to a commonly-felt impression that they are useless. Planners of two other rural counties have commented:

> "Decision making officials tend to resent [the] EIR process since it interferes with their freedom."
>
> "Commissioners do not read reports, are all for development."

POSITIVE ROLES FOR ADMINISTRATORS AND CITIZENS

In Section VI, several comparatively positive examples of local use of the EIR process are discussed. Richard Hall, the manager of a particularly effective one in Santa Clara County, has noted the especially important role of a responsive community:

> The heart of it is, you have to react to the local community... We can do things in Santa Clara County that you can't expect the people in Mono County to accomplish, or Del Norte. We have a lot of people, a lot of money, and a fairly interested constituency. I can recall an EIR that was challenged by the Loma Prieta Chapter of the Sierra Club in a 50-page rebuttal, single-spaced. They had more information in it than the initial EIR.

Not every community can expect to field that level of activity; but the existence of this kind of support has enabled this particular county government to innovate well beyond the average, developing approaches that may be of use to other jurisdictions.[36]

A detailed case analysis of a California city, reported in a wide-ranging EPA study entitled Environmental Management and Local Government, draws a related conclusion:

> Inglewood's Environmental Impact Statement process has proven successful--not so much because it has killed environmentally damaging projects, but because it has introduced environmental considerations into the decision making process of both private developers as well as governmental decision makers. Its most serious problem may be the inability to accurately assess the environmental impact of a project, given the current state of available knowledge. Other criticisms of the process--e.g., its cost, or the delay involved--are minor, when compared to the benefits that can be gained if a project that is potentially harmful to the environment is blocked. But the technique requires dedicated administrators and vigilant citizen participation; the process can quite easily become a pro forma exercise without these. [Emphasis supplied][37]

Many planning officials have responded positively to the new environmental mandates. The Director of Planning of a small San Francisco Bay Area city states:

> I believe the most important effect of the EIR requirements is to force our staff to prepare more comprehensive and meaningful reports. I have noticed that over the years I have stopped considering certain factors in evaluating projects because of lack of interest on the part of the decision makers. Now they are required to look at environmental factors. We are back to preparing better reports.

A planner in a small Los Angeles area city noted the EIR is

> becoming more helpful on almost a project by project basis...We see almost daily improvement in the coordination with other agencies and, more importantly, it has made us aware of coordinating opportunities that were neglected or undiscovered prior to now.

A TRANSIENT PHENOMENON?

A major contributor to the problem of paper overkill in the EIR process is the tendency for procedures to become institutionalized, with the result that reports on related or similar projects may fail to adapt and improve as the facts and conditions of the general case become well understood.[38] This kind of situation fails to recognize that the EIR process is--unlike many regulatory procedures--by nature a transient phenomenon. Its intent is to produce an "informational document"; this can have no more obvious effect than for information to accumulate, and --if there is active local discussion--for learning to take place. Processes that fail to change as they learn are very likely to suffer the strains of dissatisfaction.

Change in the local process with time is therefore widespread among agencies where there is significant local support, and particularly, where there is local dialogue about local informational needs and about the role and character of the EIR process itself.

The City and the County of San Diego provide two examples of jurisdictions that have experienced distinct evolution of the EIR process, and of the role of that process in government.

Immediately after the Mammoth decision, the City placed a temporary moratorium on development approvals and began to put together an EIR staff. Twelve individuals--some of whom had little directly applicable prior experience--were rapidly selected from the various City departments and assembled as a centralized staff to prepare and review EIRs. This staff was subsequently designated as the Environmental Quality Department of the City, reporting directly to the City Manager. In that position, the role of the EIR staff was to serve as environmental advocate and advisor to the City Council and executive staff, operating in parallel with the Planning Department and Planning Commission. In February 1975, after a drawn-out controversy over the appropriate role and position of the unit, it was formally incorporated into the Planning Department (assurances having been given on all sides that it would maintain an independent voice on environmental matters). The principal reason given for the change was that the process-development benefits deriving from the presence of the environmental unit are now most needed in the land use planning process itself.[39]

While the City was getting organized after Mammoth, the County of San Diego was already mobilized and prepared to act on EIRs. Nevertheless, the County has similarly undergone very substantial change and adaptation of its process with time. A major change is now underway that will divide the EIR program into two sections: "project level" EIRs, closely tied to functions of building inspection and project level planning, and "systems level" EIRs that are combined into a central Integrated Planning Organization including non-land use types of planning.[40]

IMPLEMENTING THE PROCESS: A SEQUENCE OF EVENTS

Emplacement of the impact analysis process in local government has been uneven in timing and in character, depending on many circumstances of local politics, economy, administrative traditions, personalities, and physical environment. Part of the effect of CEQA has been to test ways emplacement may occur by simply requiring local agencies to develop procedures, without giving detailed guidance. Local agencies have been at liberty to experiment with their own management structures and processes, accommodating environmental quality considerations to the extent that appears necessary or desirable.

An analogous unevenness of performance in Federal agencies has been observed in the implementation of NEPA. The Fifth Annual Report of CEQ contains a further analysis of NEPA, in which a generalized evolution of agency response is described. Three phases are indicated, which can generally describe similar events in local government in California:

> (1) Development of Awareness -- 1969-70: ...most agencies adopted the position that NEPA did not apply to them at all--at least not to most of their programs--or, if it did apply, an impact statement could be prepared by their administrative staff as a finishing touch when the project went forward for final agency approval...
>
> (2) The Transition Period -- 1970-73: During this period agencies came to grips with the fact that NEPA had to become a regular part of their activities. At first, many agencies attempted to comply with the Act on an ad hoc basis. Frequently, an agency would decide to prepare an impact statement only when challenged by the public for its failure to do so. The period was marked with uncertainty and, in some cases, disruption...
>
> (3) Integration of NEPA into Agency Operations: The third stage of NEPA development began for many agencies with the promulgation of CEQ's guidelines in August 1973. With the early uncertainties about NEPA clarified, the task was to weave the policies and procedural requirements of NEPA into each agency's programs. For many agencies, this stage is not yet complete.[41]

EFFECTS OF AGENCY ATTITUDES AND STRUCTURES

By way of illustration, comparisons are drawn in the CEQ report between the Atomic Energy Commission (AEC, now the Nuclear Regulatory Commission) and the U.S. Forest Service, in regard to performance of each agency, and to the management structures evolved in responding to NEPA. These illustrate a contrast in agency attitudes that may similarly be observed in California.

The AEC had originally defined its responsbilities narrowly, restricting its reviews to radiological impacts until the famour Calvert Cliffs court decision of July 1971, which ruled that a complete, independent review was required of all major AEC decisions. Within four months after the decision, the agency had developed a strong centralized environmental review effort, involving a staff of about 200 people drawn together from a variety of Agency programs.[42]

The U.S. Forest Service, by contrast with the AEC, interpreted NEPA at the outset as "supportive of the Service's conservation ethic and fully consistent with its existing responsibilities..." It also "perceived procedural similarities to existing practices." These included multiple use surveys and impact surveys on actions such as major timber harvesting contracts.

> Because of these similarities, some officials of the Forest Service were tempted to view NEPA as not affecting their agency. This view did not prevail. Instead, the decision was made to implement fully the new law.

The result is a highly decentralized program in which most of the responsibility for impact statements is delegated to Forest Service offices, where a large number of people are involved in the process. Public involvement is actively solicited, and is far more important to the Service now than it was before NEPA. Minor actions not requiring a formal EIS are accompanied by analysis and review covering the same points as an EIS.[43]

The responses differ radically: For the AEC, the environmental program was proportionally a very small part of the overall effort of the agency, and somewhat separate from its major business. It was convenient to isolate the new program in an interdisciplinary team. For the Forest Service, on the other hand, the program had some bearing on virtually the entire staff effort of the agency. Appropriate skills and interests were available, in place, throughout the agency structure, and a great deal of effort could be mobilized to implement the act with little more than a management policy declaration.

The statewide management structure of CEQA bears some similarity to the decentralized Forest Service model. However, although State officials may wish it were so, the State government in California has far less budgetary, personnel, and policy authority over local agencies than the Forest Service has over its local offices. Rather than responding to policy directives from the central authority, local government managers are more likely to take state law and policy as a guide, but to look to their local constituencies for "marching orders." Thus some agencies of local government embraced CEQA after the passage of AB 889 as a means of carrying forward long-standing policies and plans, while others regarded the EIR requirement as a nuisance and an interference with their processes. Still others felt they didn't need to take any action.

There are divergent reasons for non-action. In the City of Brawley, the Director of Planning and Building reports "We have had no opportunity to test [CEQA], as development has been at a near standstill for some time."[44] In Palo Alto, by contrast, "there is practically no undeveloped land left in the city."[45] CEQA has hence had little effect in Palo Alto, aside from requiring a few EIRs on redevelopment efforts. In both these instances, there is apparently little role for the strong policy statements of the Act. But in Palo Alto it is because pro-environmental policy is initiated locally.[46] With regard to the potential influence of the EIR on design improvements there, a city official states "Review by [the] newly-established Architectural Review Board is a greater incentive."[47]

SUMMARY

It appears that the effectiveness and the roles of the EIR process are highly variable, and are changing with time as the process adapts to new information; in each locality the "quality" of the process (and of the individual EIR documents) depends significantly on the quality and amount of interest on the part of the public and their elected representatives, and on the quality of local dialogue that proceeds regarding individual issues. Effectiveness of the process may also depend on whether there is ongoing local dialogue about the nature of the EIR process itself, and whether changes are needed in it.

In a general way, the conclusion of CEQ about NEPA's effects on governmental process are reflected in California:

> The experiment in governmental reform begun by NEPA's passage is having steadily more wide-ranging ramifications. The Act's accomplishments to date are impressive. And there is every indication that its usefulness will increase in the coming years.[48]

As this section has emphasized, the governmental reform of CEQA is largely invisible--it has begun to make consciousness of environmental quality a consideration in the everyday activities of government. CEQA is not the sole cause of this change. As the next section will emphasize, there is a great deal of other change going on in local government due to a variety of active forces. Environmental considerations have been of concern in some of those other influences; CEQA has served as a vehicle and a focus for many energies that were accumulating for other reasons. Because of its flexibility, it has had a role in the management of change; this is a role that may be of particular importance for further, more widespread development in California local government. The Lost Angeles County Division of the League of California Cities has recognized a need of a management vehicle for this purpose:

> The primary goal of California cities should be concerned with how to manage change in the field of environment and how to balance environmental decisions with employment, adequate housing, and economic stability.[49] (Emphasis added)

In part because of CEQA, many local agencies have already been induced to look beyond the traditional constraints of local self-interest in making decisions--particularly beyond the time-honored tradition of seeking as a high priority to protect or expand the tax base of the agency itself. The quality of life has become a general subject of concern in local decisions--at least the potentiality is present for the subject to be raised in a substantive way, if there is adequate local interest.

In reviewing and evaluating CEQA, the basic issue for consideration appears to be not the evaluation of the impact analysis procedure *per se*. The question is whether the State Legislature wishes to continue to have an environmental quality policy, and how it should be enforced. The impact analysis procedure has so far proved to be in many instances an effective means of maintaining a consciousness of the present policy; if the EIR is to be continued, there are a number of technical issues relating to its management and use. These may be capable of resolution apart from the policy questions; they may at least be identified for monitoring and for improvement at an appropriate time.

A general conclusion of the present study, to be discussed further in following sections, is that the EIR process at the local level in California is in need of assistance and improvement in its technical details. Its potential usefulness in general seems to be demonstrated, provided problems such as that of excessive paper can be solved. From the standpoint of its potential contributions to the planning process, and its potential benefits to governmental process adaptation and reform, the EIR process has not yet been allotted adequate time to operate in most localities. And in many localities where it is successful, drastic change at present could be disrupting to effective programs.

SECTION V

A CHANGING REGULATORY ENVIRONMENT

In order to understand the role of the EIR process, the ways it has been used, and its future possibilities, attention needs to be given to the broader, statewide milieu of its implementation.

Reforms and changes discussed in the preceding section would be appropriate and useful if CEQA were simply a new factor introducing change into a reasonably stable regulatory environment. But that is a grossly over-simplifying assumption. The actual situation in local government in California today entails a broad range of new programs and influences, many of which are individually in a state of rapid flux, and all of which contribute to the present reshaping of local government in the State.

Change is endemic in California. And to the extent that CEQA serves as a management tool--particularly for adaptation to externally-driven change, it is more important and potentially more useful than has been implied so far.

Thus, in assessing CEQA's management role, attention must be paid to the overall assemblage of statewide programs and activities that affect the local manager of planning and environmental quality programs.

The present section discusses several factors of "ambient" change in California; it concludes with a brief discussion showing the growing importance of adaptability in the planning process as further variable factors are taken into account in local decisions.

LOCAL DIFFERENCES

Planning and decisionmaking practice for land use ranges widely in character and scope in the State, although many of the institutional forms are held in common (Planning Commission, City Council, City Attorney, Local Agency Formation Commission, etc.). Divergence of local practice may be due to many factors of local economics and politics, and due to diverse personalities of individuals involved. Furthermore, there exists a wide divergence in local attitudes toward governmental programs and structures--in particular toward land use control programs. Local and regional differences are reflected in the report of hearings held in 1973 by the Governor's Task Force on Local Government Reform,[50] parts of which are reproduced in Appendix C. Also reflected is a very strong emphasis on the continuation of traditional "home rule" in land use and environmental control.

Because the local land use control units differ substantially from one another to start with, and because the political environments are divergent, the processes of land use control may move in divergent directions in response to some of the changes described here. If local citizens challenge a regulatory practice, for example, some managers will stiffen their backs and resist the intervention, while others will welcome the opportunity for publicly-supported reform. These are factors of response that are very difficult for state officials to accommodate. A law or administrative regulation intended to equalize local practice can, in fact, have the opposite effect.

LEGISLATION

A great amount of law has come forward in recent years in response to citizen interest in environmental quality and land use control. At the national level this includes the Clean Air Act of 1970, the Clean Water Amendments of 1972, the Noise Control Act of 1972, and the Marine Protection, Research, and Sanctuaries Act of 1972.

In California, these laws are backed up by unusually strong State legislation for air quality, water quality, coastal zone protection, and energy resources management, together with extraordinary measures for local land use planning and regulation. Donald Hagman, a leading authority on land use law, has commented:

> ... at the same time the California Legislature was passing CEQA, it was also passing the strongest planning-regulation consistency laws in the country. In recent years, in unprecedented steps, the California legislature has required that every city and county, including chartered cities must adopt a general plan. Several elements of these mandatory plans must be completed by a certain date, the date setting also being unprecedented. Subdivision maps can be approved only if consistent with applicable general or specific plans. Zoning ordinances must be consistent with a general plan by a certain date. Such legislation is absolutely unrealistic. If all the planners in America were enticed to California, good plans could not be produced as the legislature has directed.[51]

There is now more law available in California than many municipalities can implement, and probably more than the State can enforce. For many local managers, a major problem is the need for coordination of a wide variety of new programs to form a locally-suitable management system; meanwhile they may be obliged to rush from one mandatory requirement to another, emphasizing--as a matter of necessity--those programs and requirements that seem most responsive to local needs and demands. Managers have handled this situation very differently from one another; differences depend largely on attitudes, resources available, and the degree of local political support for environmental management programs.

EMERGING ROLE OF THE PUBLIC

A major factor of change for local government is that the public itself has become a principal actor in policy formation and in decisionmaking; much past experience in local government is made obsolete as a result.

Don Benninghoven, Executive Director of the League of California Cities, described the situation in local government in an address before an annual convention of the Planning and Conservation League in November, 1973:

> What has really happened in the last three or four years is, the public has really taken control of the planning, whether you believe it or not. The thing is, you don't know how to do it; and the reason you don't know how to do it is because public officials, the developers, the industry—they don't know how to deal with that yet. They liked it when you didn't show up; now that you are showing up, they don't know how to give you the information in a way in which you can make intelligent decisions. That information is real power. The power is understanding.

Despite its seemingly innocuous status as an "informational document," the EIR plays a key role in the process of change because it serves, or can serve, as a medium for information and understanding. And it is set up in such a way as to provide the opportunity for the public to demand the information to be adequate and intelligible. Where that demand is made clear enough, public agency staff may be encouraged by policymakers to try to find ways of accommodating the public's informational needs and interests. This can lead to new forms of interface between the public agency and its constituency; moreover, it can serve to build a special, responsive segment of the public that is particularly interested in the activities of the environmental programs of local government. Ms. C. F. Ridenour, former Assistant Director of the Department of Environmental Quality of the City of San Diego, has commented that EIR analysts in the Department often have had the feeling they were "doing staff work for the public," as opposed to merely "working for the City."[52] Jack Green, manager of the environmental quality program of the City of Los Angeles, has in a similar vein described his department's evolving role as a bridge between the more traditional City government structures and the evolving citizen interest groups; his intention is to utilize the EIR program as a means of smoothing the transition from old ways of doing business to new ways that are better able to accommodate the expressed interests of citizen groups.[53]

Existence of this kind of awareness, and opportunity for more direct contact with administrators is important, and to a significant extent is strictly attributable to CEQA. Meanwhile, the environmental impact units in government have opened new categories of job possibility, many of which are filled by "activist" citizens, or by individuals who would not otherwise have had an opportunity to work in government, or on environmental problems. This situation provides an even more intimate contact of "outsiders" with "the system."

LITIGATION

Public desire for involvement has been reinforced by new legal tools and administrative policies encouraging public participation. Of particular importance has been the recognition by courts of broad public standing to sue in environmental matters.

The importance of standing has been significantly amplified by the evolution of public interest law organizations, which develop and carry a high proportion of the most important, precedent-setting legal cases. At the present time in California there exists a network of several such groups, including the Environmental Defense Fund, the Center for Law in the Public Interest, The Natural Resources Defense Council, and the Sierra Club Legal Defense Fund. These groups often operate in parallel with or in collaboration with the Environmental Unit of the State Attorney General's Office; together they represent a very influential network of professional legal staff operating in support of environmental goals.

From the viewpoint of the average local government administrator or politician, the legal authority and the threat of litigation posed by such groups and by the citizens' organizations they may represent, is uniquely a phenomenon of the 1970s; it has brought a major change in the rules of operation of local government. Because of the new milieu of environmental law activities, public law officers (staff of city attorneys and county counsel) have been obliged to become informed about environmental law. Consequently self-education and mutual education at the same time puts them in position to advise their client elected officials about potential positive environmental actions on behalf of the municipality--for example, in challenging a neighbor jurisdiction on a potentially damaging project proposal.

A further related development is the evolution of "private interest" law organizations set up specifically to counteract the programs of the "public interest" groups. A major group of this type, the Pacific Law Foundation, was established in 1973 by commercial, real estate, and industrial interests.[54]

As a sidelight on litigation and on the general public willingness to challenge governmental administrators, it is noteworthy here that increased interest in and understanding of local government has proceeded simultaneously during the past two years with the "Watergate" era in national government--which provided an extraordinary increase in popularly-available insights into the workings of the Executive, Legislative, and Judicial branches of the Federal government, and into potential interactions among the three branches. Citizen challenges to local government (sometimes of almost a "sporting" quality), and a widespread interest in "opening up" the local system, may have gone hand-in-glove with televised Congressional hearings on one hand and nightly news reports of court actions on the other.

Challenging administrators, in any event, is now a far more "normal" activity than it was just a few years ago; and going to court for the purpose is probably less frightful than it was. Such changes, once again, are most likely not reversible--at least not to the extent of re-establishing prior conditions. Thus the parameters of design of a regulatory system for land use management must be different today than two years or five years ago. In some localities it may be realistic for developers to hope the EIR and the public role will simply "blow away" so that easier times can be restored; but that is probably not realistic on a statewide basis. Removing CEQA from the present system would make it less convenient for citizens to monitor and challenge local government; it is not likely to remove their interest in doing so.

CITIZENS ORGANIZATIONS

An important factor encouraging attention to land use in California--and adding to complexity--is a diverse array of citizens groups, and a small but active, well-established leadership cadre in conservationist and planning organizations. Some leading individuals and organizations have operated for decades with considerable success and with well-established credibility. The oldest such group, the Sierra Club, traces its roots in public activism back to a famous turn-of-the-century losing battle with the City of San Francisco over the construction of the Hetch Hetchy Dam in Yosemite National Park. They have been joined in recent years by a number of energetic and politically influential groups such as California Tomorrow (which advocates statewide planning), the Planning and Conservation League (which specializes in lobbying and in the development of State legislation through normal legislative channels), and the Peoples' Lobby (which focuses on the initiative process of legislation). Numerous other groups at the areawide and local scale combine with the larger statewide bodies in a variety of ways to form an institutional network in dealing with issues of greater-than-local interest. In California today such issues are not legislatively defined (as they are in some other states); they are operationally defined by who is involved--the individuals and groups, their reputations, and the roles taken in the given issue.

POLITICAL ROLE OF CITIZEN GROUPS

The political role of the citizens environmental movement came to a climax in the fall of 1972. With the passage in quick succession of the Coastal Zone Initiative and AB 889, citizen activists found a new level of influence. Environmental groups--encompassing by now a broadly-based, politically-experienced, and in many ways technically competent, statewide constituency--emerged from this climactic episode as virtual "owners" of two highly significant pieces of environmental legislation. And through continual action they have maintained that proprietary interest during the succeeding two years.

Citizens now had more direct access to local legislation through the EIR. In the coastal zone, they had a second level of authority available through a possible veto of local decisions by a regional commission; the strong wording of the initiative in essence required the denial of applications if environmental damage was shown to occur. Thus, for a particularly sensitive and important portion of the state, the coastal zone, CEQA in effect had "teeth."

Public groups found a number of sympathetic public officials to deal with. Many individuals came to office on environmental platforms in the November 1972 election; many others already in office responded to the newly visible constituency. At the same time, many planning professionals within government agencies were found to be "ready-made" allies for advocacy groups; they had in many cases been advocating the same purposes within government for years, with limited success.

The public had previously been involved in decisionmaking processes in a consultative capacity; now they were entering--substantially at their own initiative--a more directly participatory role in decisionmaking. And the new role was not restricted to "environmentalist" groups. A broader, developing basis of community political participation is described in the recent State survey of California local government, which noted

> a growing trend towards the establishment of community organizations, and the coalition of these organizations within a city or county, as a means of citizen communication with local government.
>
> Some of these are compulsory neighborhood associations formed by developers of planned unit developments and subsequently turned over to homeowners to operate. Others are voluntary homeowner or neighborhood associations. A third category involves the municipal advisory councils authorized by section 31010 of the Government Code in unincorporated areas. ...
>
> Local governments vary in their response to these organizations from tight control over what they are authorized to review or even discouragement of their establishment to strong support and even implicit delegation of policy making authority to them...
>
> Community organizations serve as effective mechanisms for the development of local leadership. To some extent, therefore, they are viewed nervously by elected policymakers as potential competition at the next election...
>
> Citizen groups often view themselves in an adversary relationship with local government and as "ombudsmen" for their constituencies. This was apparent even where the city or county had an active program of citizen involvement.[55]

For groups such as these, as well as for environmentalists, the EIR process provided a focus for energies that departed drastically from the usual experience of participating in planning. An EIR may have an immediate payoff, in contrast to a community plan, which may commonly involve citizen participation, but which can require years of earnest meetings, and still be ignored in the final analysis.

By the end of 1973, further political gains at the local level had added to the environmental activists' aura of success. On December 14, the Los Angeles Times ran a front page feature story entitled "Environmental Movement Firm at Grass Roots." It tallied the status of the movement thus:

> While environmentalists watch their work unravel at the federal level, they are consoled to find their strength increasing at the city and county level.
>
> They once looked on local government as the handmaiden of developers, but now in many cases local officials are environmentalists.
>
> Low-echelon staff members tend to be young and trained to take the environment into account. At the top are a growing number of elected officials who won office by championing environmental causes.
>
> Political leaders in California who have achieved national recognition, such as Los Angeles Mayor Tom Bradley and Mayor Pete Wilson of San Diego tend to be those who are best able to articulate environmental tradeoffs to the public.

STRUCTURAL CHANGE: THE "QUIET REVOLUTION" AND THE "COUNTERREVOLUTION"

One factor of change of particular interest to local politicians, but also of major interest to administrators, is the change--and prospects of further change--in the balance of authority between local, State, and Federal officials.

The past decade has witnessed a general trend toward centralization of environmental quality control in State and Federal agencies accompanied by a great deal of controversy over the merits of the resulting programs. In the field of land use control, the trend is often referred to as the "Quiet Revolution," in reference to a 1971 report by Fred Bosselman and David Callies written for the Council on Environmental Quality (CEQ).[56] This report describes the development through State legislation, beginning in the early 1960s, of a number of Statewide and areawide institutions for land use control, including the San Francisco Bay Conservation and Development Commission (BCDC, the progenitor of the present Coastal Zone Commissions), and analogous programs in Hawaii, Vermont, and other states.

The principal rationale for the "Revolution" was the inadequacy of local control:

> The ancient regime being overthrown is the feudal system under which the entire pattern of land development has been controlled by thousands of individual local governments, each seeking to

> maximize its tax base and minimize its social problems, and caring less what happens to all the others.[57]

The original purpose of traditional controls, a local zoning ordinance and comprehensive plan, was "to maximize land values,"[58] and not to address and protect the resource values of the land.

> It has become increasingly apparent that the local zoning ordinance, virtually the sole means of land use control in the United States for over half a century, has proved woefully inadequate to combat a host of problems of statewide significance, social problems as well as problems involving environmental pollution and destruction of vital ecological systems, which threaten our very existence.[59]

Analogous rationale has been used in the development and promulgation of State and Federal controls in related fields, notably air quality and water quality. The net effect has been a diminution of "home rule," and growth of central institutions for environmental control.

The contrary effort and desire on the part of municipal government officials to restore traditional "home rule" in land use matters to the local level--in which CEQA plays a role--could be characterized as a "quiet counterrevolution" in land use control. It remains for the local level of government to demonstrate competence in managing land use in a way that could accommodate State and Federal needs and criteria.

At the present time, the structure of Federal/State, State/local, and Federal/local relationships in environmental quality control is highly complex, and is rapidly changing. Of particular importance to the present discussion is the convergence of air quality and water quality planning with the general subject of land use controls. It is unclear what pattern of institutions and authorities will emerge. The Council on Environmental Quality has illustrated some apparently systematic problems with the relationship among environmental control programs affecting land use, and it has drawn the following conclusion:

> In summary, it is clear that the Clean Air Act and the Federal Water Pollution Control Act have potentially significant land use impacts. It is not yet clear how serious these will be, or even what direction they may take. Much more analysis is required. But this brief review of the incentives established under the laws suggests that in some cases the impacts may not only conflict with other social and environmental goals but may also be perverse in terms of the attainment of the pollution control goals of the Act from which they derive.
>
> EPA recognizes many of these problems and calls for integrated and comprehensive planning in its

> guidelines and policy statements. However, analyzing all the potential land use effects, developing complementary guidelines, and overseeing the responsibility for preparing integrated plans which balance off the various environmental, economic, and social objectives is an extremely complex undertaking.[60]

David Morell, a political scientist who served in 1974 as Acting Director of a newly-established EPA Office of Transportation and Land Use Policy, has pointed out an urgent need for "vertical integration of Federal, State, areawide, and local programs in planning and land use regulation. He places the burden of initiative at the local level, challenging local officials to respond positively to Federal controls in their own self-interest. He believes that the best approach is to incorporate State and Federal standards into local decisionmaking:

> If local governments across the country prove unable to devise mechanisms and procedures to effect such vertical integration, taking account of state and national environmental standards in their land use decisions, one can predict an inexorable movement toward greater external control over land use, both the "quiet revolution" in state land use control described in the CEQ report of that title and increasing federal intervention through such means as specific EPA pre-construction review requirements for new facilities: indirect source review, parking management, air quality maintenance plans, regulations to prevent significant deterioration, 208 wastewater plans, waste discharge permits, airport noise regulations and all the rest. This shift up the vertical ladder need not occur, but it can be avoided only if local governments can meet the challenge of environmental quality/land use effectively. In a real sense, this is a political choice which local officials and their constituents must make: do they organize themselves to meet their new responsibilities in the Environmental Age, or do they abdicate this responsibility to higher levels of government? [61]

Morell expresses concern that "the bureaucratic and programmatic complexity affecting land use and environmental policy almost defies description; and it seems to be expanding exponentially." Despite the highly strained institutional capacity of local government, Morell concludes that the most important point of focus in the current land use scene is the local decisionmaker. Real progress will depend on integration of planning into local political decisionmaking, to the extent that "the mayor must become the land use planner."

CENTRALIZATION VS DECENTRALIZATION OF REGULATORY CONTROL

In concluding this section, it may be stated that the diverse factors mentioned, and the diverse ways they aggregate in any given locality, can be confusing to the local manager--who has to put together a program that can continue to process land use applications in the midst of a situation that is highly complex, and that is rapidly changing in complex ways. Clearly it would be difficult if not impossible for a central State or Federal agency to assume responsibility for management of such a complex situation--there would simply not be enough time and information available for a local administrator to gather and document all details about what is happening, transmit them to a "higher" level, and wait for instructions on how to proceed.

Similarly, it would not necessarily be advantageous to the local agency (or to the central agencies) for parts of the present regulatory system to be arbitrarily cut away in order to make the system simpler to manage from above. In the present smorgasbord of available law, that would simply limit the possibilities for local innovation. In any case, it should be clear that local needs and interests differ substantially; in order for regulatory programs to be effective, it may be necessary for them to be tailored in some ways to the local situation. Local officials are the most likely candidates to know how to do that. In a number of localities in California, local managers have made a virtue of adversity; they have gone somewhat beyond the minimum level of implementation indicated by the Legislature and by the implementing State and Federal regulations, assembling programs that are adaptable to the changing local scene. These localities are becoming in a sense "self-regulating;" they are in some instances developing linkages between program areas that are far ahead of the present level of advancement of integration of overall State and Federal land use policy and program. Present complexity at higher levels has resulted in de facto delegation to the local level of the integration of functional programs with one another. Although this was not a conscious policy intent, the resulting administrative structure may make sense, and may be deserving of further development.

Stafford Beer, a distinguished British cyberneticist, has pointed out that the consideration of environmental quality in public policy introduces an entirely new order of complexity into planning and decision-making. And because change is endemic and complexity is unavoidable, he states that government now is confronted with an unprecedented problem of organization. There is a great deal of confusion about what to do next. Beer identifies the key problem: that governmental structures tend to be rigid, and were designed to handle different kinds of problems than those they now face. There are a number of specific threats of ecological and societal crises to be dealt with; more important now is the larger threat of breakdown of the machinery of management.

Beer states an essential principle to keep in mind in developing further systems of environmental management: "PLANNING IS HOMOLOGOUS

WITH ORGANIZATION."

> It sounds trivial; it is certainly obvious. How can you have plans that are not couched in terms of the organization which must implement them? But just think carefully about the converse proposition. If the organization is no longer well-adapted to the environment, how then can the plans be relevant to existing threats? It is just not possible. We have totally failed to grasp this point, despite overwhelming evidence that our plans do not work very well, and that the threats are not being competently met.
>
> Nonetheless, there is indeed an abiding sense of unease. So what do we do? We throw into the situation all the resources we have, resources of money, time and skill. This is done in the cause of efficiency: do it better, do it faster, do it cheaper. That will stave off the threat. The point is: do what? Obviously, implement the plans. But we have already shown as a lemma that the plans cannot possibly be rightly structured. Thus it is that we expend our resources in the ever more efficient implementation of irrelevant plans.
>
> There is a second massive difficulty that is illuminated by these considerations. If planning is homologous with organization, then plans - which of their very nature ought to be syntheses of parts into a greater whole - become instead ever more detailed and localized sets of unrelated minor decisions. That is because, in deference to one of the major discoveries of the social sciences, we are trying to hold the level of decision at the lowest possible echelon as a matter of policy. I have no quarrel with participative management; in fact I urge it forward. But this ought to mean that small decisions, made in the appropriate locale, are sucked upward, and reformulated into a master plan expressed metalinguistically. Instead it means that the making of decisions is a task pushed down, and implicitly condemned to a stereotyped outcome.[62]

Beer's conclusion bears a relationship to some of the current proposals for the future structure of State planning--an important subject of discussion and debate in California State government at the present time. The League of California Cities is the most prominent advocate of the type of strategy indicated by Professor Beer. In its "Action Plan for Environmental Control and Land Use Authority," a section entitled "Environmental Quality Planning Process" states:

> The role of the cities would be basic to the entire State planning process. The plans of the cities

> would be the building blocks. The city plans would be coordinated at the area level by planning councils, as a part of the comprehensive planning process and in conjunction with areawide planning. Environmental impact reports should indicate the effect on the environment of the city, area and state plans when implemented. Specific development would then be judged on the basis of its consistency to the general EIR, with only additional specificity included as necessary for the individual project EIR.[63]

The Region IX Office of EPA is in the process of developing a similar strategy for the future relationship of local plans to State and Federal policies and programs.[64]

SECTION VI

AN ADAPTIVE TOOL FOR MANAGEMENT

In some localities, the EIR process has been used as a flexible management tool, filling locally-perceived gaps in administrative process, and adapting to specific local needs and to changes in needs. Significant innovation has occurred and continues to occur in a number of localities.

The following descriptions of CEQA implementation in several cities and counties are reprinted from our previous report. They describe several examples of different approaches to local management of the EIR process.[65]

> The act and the guidelines specify numerous procedures, but give little indication of the professional skills or management structures to be used in executing them. The result has been a wide variety of administrative approaches adapted to local conditions.
>
> In some cases, this adaptation has involved a considerable degree of enterprise and creativity on the part of local officials in relating the EIR to ongoing governmental processes and other new legal requirements. Little of this innovation could have been prescribed in the law, or was foreseen in the guidelines.
>
> Although CEQA was widely ignored by local government before the Friends of Mammoth decision, some cities and counties moved ahead on their own initiative. The City of Claremont, for example, established an Environmental Resources Task Force in October 1970 -- immediately after enactment of CEQA. This group, composed largely of college faculty, did a carefully-documented study of the community's physical environment, and helped to enact a local ordinance setting up an EIR management process that included -- some nine months before Mammoth -- a requirement for analysis of private projects.
>
> The County of San Diego had similarly enacted in June 1970 (when NEPA was law but CEQA was still in the Legislature) an ordinance to establish an "Environmental Development Agency." A program of environmental studies begun at that time, together with innovative steps toward new forms of management process, later led to funding by the Ford Foundation of an ambitious program there, the "Integrated

Regional Environmental Management" project (IREM). Stated intentions of this project were to use the EIR process as a means of changing relationships among agencies, of breaking down internal barriers among governmental units, and of incorporating citizens in the new activities. The project began in April 1971, two years before statewide implementation of AB 889. Its annual budget of over $400,000 was three times that of the State Office of Planning and Research, though it was still far smaller than the planning budgets of the County, the City of San Diego, or the Comprehensive Planning Organization (San Diego County's regional council of governments), which together totaled about $5 million for the year 1971-72.

The EIR management process adopted by San Diego County and developed through the IREM project is similar in structure to the approach now used by the majority of California's cities and counties. However, it involves considerably more staff effort, and a higher degree of technical content, than is usual. It also involves more steps. The EIR procedures adopted by most local governments can be described as streamlined versions of the San Diego County process.

The EIR process for private projects in the County of San Diego is illustrated by Figure 1. The "Processing Agency" is the County Office of Environmental Management, a successor to the functions of the IREM staff. It is organized as a unit of the Environmental Development Agency, which is also the parent agency of the County Planning Department. The Environmental Review Board (ERB) is composed of staff representatives of OEM and the Departments of Planning, Public Health, and County Engineer.

The fee for initial screening to determine whether a project would have a "significant effect" is $70. If an EIR is required, it is prepared in draft form, generally by a private consultant on behalf of the applicant. Typical costs to the developer on an average project of a few acreas to a few tens of acres would range from $5,000 to $10,000. Processing fees charged by the County for review and preparation of the final EIR range from $150 to $900, depending on the type of application. The final EIR, prepared by the OEM staff, consists of:

1. The draft EIR as amended by the ERB;

2. A section containing the comments received through the consultation process, either verbatim or in summary;

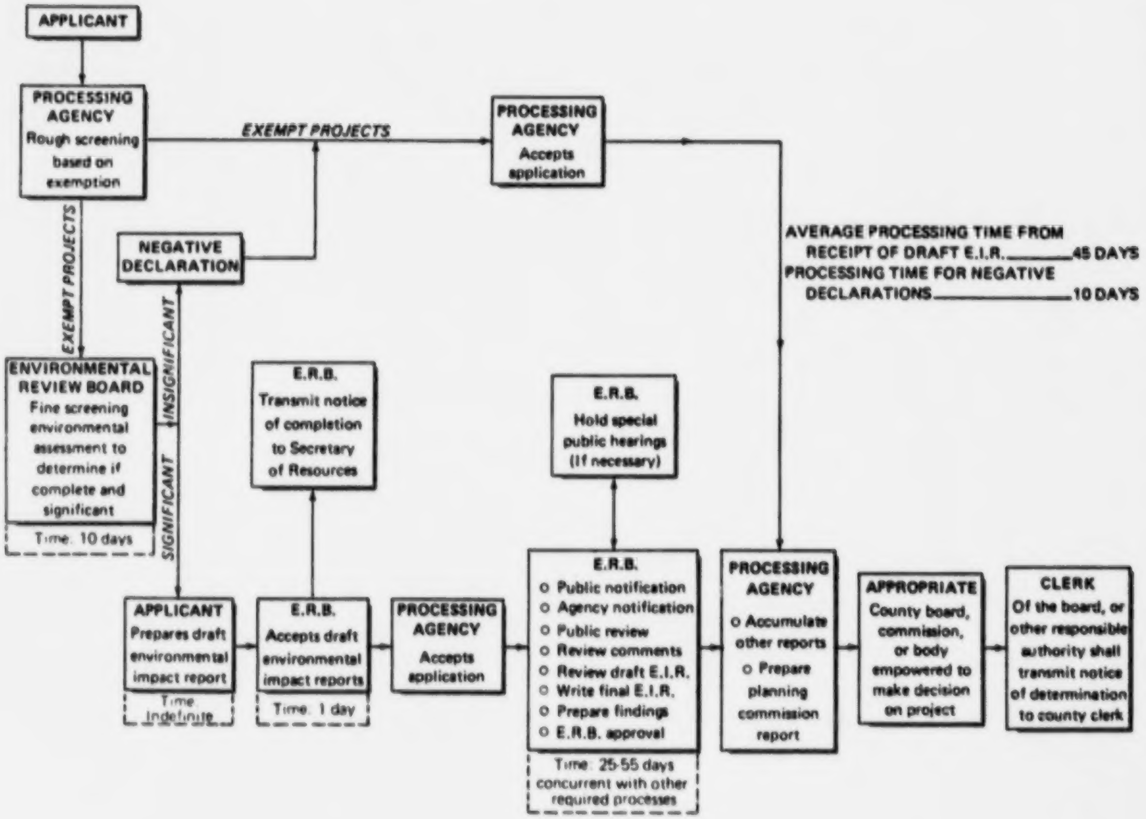
APPLICANT
PROCESSING AGENCY
Rough screening based on exemption
EXEMPT PROJECTS
PROCESSING AGENCY
Accepts application
EXEMPT PROJECTS
NEGATIVE DECLARATION
AVERAGE PROCESSING TIME FROM RECEIPT OF DRAFT E.I.R. ______ 45 DAYS
PROCESSING TIME FOR NEGATIVE DECLARATIONS ______ 10 DAYS
ENVIRONMENTAL REVIEW BOARD
Fine screening environmental assessment to determine if complete and significant
Time: 10 days
INSIGNIFICANT
SIGNIFICANT
E.R.B.
Transmit notice of completion to Secretary of Resources
E.R.B.
Hold special public hearings (If necessary)
APPLICANT
Prepares draft environmental impact report
Time: indefinite
E.R.B.
Accepts draft environmental impact reports
Time: 1 day
PROCESSING AGENCY
Accepts application
E.R.B.
o Public notification
o Agency notification
o Public review
o Review comments
o Review draft E.I.R.
o Write final E.I.R.
o Prepare findings
o E.R.B. approval
Time: 25-55 days concurrent with other required processes
PROCESSING AGENCY
o Accumulate other reports
o Prepare planning commission report
APPROPRIATE
County board, commission, or body empowered to make decision on project
CLERK
Of the board, or other responsible authority shall transmit notice of determination to county clerk

Figure 1. EIR process for private projects, County of San Diego.

3. The response of the ERB to the significant environmental points raised in the review and consultation process.

The Environmental Impact Analysis Division of OEM was budgeted in 1973-74 for 14 full-time staff positions, including 11 professional analysts. The number of EIRs processed during 1973 was 192, including 172 on private projects. The total number of environmental assessments processed was 2,378, of which 2,258 were for private projects (94.9%).

A few other examples of how local governments have implemented CEQA will be cited to show alternative approaches to EIR management taken in other parts of the State.

In Santa Clara County (pop. 1,000,000), at the south end of San Francisco Bay, an active effort is made by the County's EIR staff to press developers into active participation in the EIR process. Here, unlike San Diego County, the EIR system is an integral element of the planning function of the County. EIRs are handled within the Planning Department by a Senior Planner -Environmental Specialist, Richard Hall, who is aided on an "as needed" basis by four other planners. Much less staff effort is available for EIR management than in San Diego. For reasons of efficiency as well as utility, emphasis is given to early consultation and review of development plans -- at the idea stage, if possible. In this context, CEQA provides the basis for a broad-ranging negotiation with a developer. Consideration is given to improvement of design concept as well as to avoidance of technical impacts.

Admittedly, the "horse-trading" aspect of this process can open the way to abuses, if the public is not attentive to the results. For the approach to be effective, much reliance must be placed on the motivations, knowledge, and design skills of staff involved in the preliminary negotiations. On the other hand, this reliance is much to the liking of the professional planners involved; for them, CEQA is providing in this context an extraordinary opportunity for bridging between two major traditional roles of planners: that of making plans, and that of struggling against development proposals that violate the plans. The newly-established "middle ground" can allow the planner to design around environmental problems, or to invoke appropriate mitigating measures. The incentive for the developer is that a negative declaration on the project may reasonably be granted, or that the conditions imposed might allow his project to pass EIR review. In some cases, projects and sites that are likely to have severe adverse effects can be identified before the developer has made major commitments of time, money, or professional pride.

Credibility of the EIR process itself is essential to the viability of planner-developer negotiations. In the case of Santa Clara County, most projects are screened out or altered before they reach the stage of formal EIR processing. The EIR itself becomes almost an "appeals" process by which the developer attempts to show that his project is not damaging. Few projects that reach this stage are able to pass through it. On the average, only about one project per month is making the attempt.

According to Mr. Hall, "developers don't try to push bad projects any more; they need better odds going in, and the ante is too high when an EIR costs $3,000 to $5,000. It's a different game from the days when a subdivider could get a draftsman friend to crank out a tentative map, file it with a $25 fee, and turn a fast profit." Hall also reports that banks and savings and loan associations in Santa Clara County are requiring, in an increasing number of cases, an analysis of environmental consequences as part of the preliminary feasibility appraisal of development projects proposed for financing. To the extent that capable design professionals and environmental analysts are hired by development companies, the Santa Clara County approach tends to become self-regulating; it may minimize the EIR workload on the planning staff, and maximize their opportunity to engage in "environmental planning."

The City of Irvine offers another unusual approach to EIR management. Irvine (pop. 20,000) is in Orange County at the southern reaches of the suburbs of Los Angeles. It lies entirely within the boundaries of the privately-owned Irvine Ranch, a hugh area that is gradually being transformed into a "new town." At the end of the AB 889 moratorium, early in 1973, several major EIRs for development projects within the City were already half-completed, entirely at the initiative of the developers, who were hoping to minimize the delay on the approvals of their projects. City planning staff did not feel prepared to review these EIRs in-house, and they proceeded to set up a process in which a consultant was hired by the City (in addition to the consultant which had prepared the draft report for the developer), at the applicant's expense, to review the draft and prepare a final EIR. This process seems to have worked well, though it was expensive for the applicant. Fees for the second consultant ranged from $1,500 to $7,500 for review of the EIR.

This process is now changing to a management model in which the City will be the client for the consultant on the initial EIR draft. The City's planning staff wishes to develop a system in which it serves as a "general contractor," hiring its own subcontractors to carry out aspects of the EIR analysis and management process.

The approach of the local government serving as client for the private EIR consultant is now practiced in a number of jurisdictions; it seems to be especially popular in the San Francisco Bay Area. An example is the City of Sausalito (pop. 6,000), just across the Golden Gate from San Francisco. Here, a request for proposals (RFP) is circulated among a select group of consultants judged qualified by the City. The developer is allowed to choose three candidates from a list of ten. Only those three are given the RFP, and the City makes the final selection. In every case to date, the nod has gone to the firm with the lowest cost estimate, though according to City officials, this is not considered a major basis for judging consultant proposals. The City tries to specify closely the specific kinds of information most needed and desired in the immediate decisionmaking process. In Sausalito, these tend to be traffic congestion, social, and economic impacts. These items are perhaps somewhat out of line with the original purpose of CEQA, but they are permitted under the law and the guidelines.

Two full-time planners constitute the entire planning and EIR management staff for Sausalito. However, this small City has a burden of pending development proposals of about $100 million, and the town is politically divided on development issues. The EIRs have played an important role here in evaluating such proposals. A major saving grace of CEQA in Sausalito is the provision (added by AB 889) that explicitly allows public agencies to charge for the costs of preparing and reviewing EIRs, thus greatly increasing the City's capability to fund needed studies of development proposals. The planning staff spends a large portion of its time servicing EIRs in its role as contract officer and project monitor for the City. The developers deposit funds with the City to cover EIR costs. They participate in the process only by supplying information, and by discussing mitigation measures and alternative project concepts as these possibilities emerge.

Like Sausalito, the City of Del Mar is a small and very attractively situated community with considerable development pressure. Del Mar (pop. 4,500) is located on the coast immediately north of the City of San Diego. Here, as in Sausalito, a planning director and one assistant handle both planning and EIR management. EIR preparation is done by a consultant under the direction of the planning director. But in this case, a "sole source" contractor is used. The consultant is available as needed, but he is not given a retainer or formal contract until a specific EIR is required. The planning director has worked with this firm to help determine how its skills might be improved for his EIR needs.

CONTINUOUS CHANGE AND ADAPTATION

Since completion a year ago of the prior report, significant further adaptation and change has occurred in the jurisdictions described.

COUNTY OF SAN DIEGO

Several problems were observed to emerge in San Diego County after the EIR process stabilized and began to accumulate information and experience.

1. "Data Saturation": Reports became geared to providing information for the County bureaucracy, and had inadequate policy sensitivity; most of the information provided decisionmakers appeared to them to be useless and distracting. An effort was made to overcome this problem with a one-page "Executive Summary," presented in a more free-flowing, interpretive, plain-English style.

2. The "Raindance Effect": Too many reports came out sounding the same; decisionmakers became bored (as did the EIR staff), feeling that a performance was being repeated primarily for institutional reasons. Planners, meanwhile, learned to predict what the EIR would say--on a series of six subdivisions in the Fallbrook area, for example--and suggested the process could be routinized with ordinances.

3. "Over-expectations": At the same time, too much reliance was often placed on the EIR in project review, especially by citizens; project denial, however, was not felt by EIR staff to have much effect upon the ongoing planning processes of the County.

4. The "Missing" Mid-Range of Scale: Like the planning process itself, the EIR failed generally to address a gap from development project review range to the 1995 General Plan range of scale.

5. "Post-hoc" Evaluation: Little or no effort went into monitoring the effects of the EIR after decisions were made.

These problems, plus a generally stimulating effect of the "EIR presence" in the County, have helped to bring about a major re-evaluation and redesign of the County's overall planning system. "Strategic" long-range planning has been formally distinguished as a separate activity, and placed in a new "Integrated Planning Office" (IPO), which is beginning to be implemented in Spring 1975. This office combines environmental planning with long range planning for land use, for transportation, and for capital facilities into a single activity reporting directly to the County's Chief Administrative Officer. Large scale "systems-level" environmental analysis programs will be included in the work of this office. EIRs on the County General Plan, on its various plan elements, and on smaller scale Community Plans, are expected to evolve into a general purpose data base and policy framework, taking the form of a "Master EIR" (MEIR) for each subregional area. Emphasis will be placed on development of priorities, standards, and criteria for decisions, and on developing an ongoing inventory of data and activities. "Ivory Tower" purity is intended to be sacrificed in favor of focus upon governmental decisionmaking tradeoffs.

Impact analysis at the project review level will be combined into a new "Community Services Agency" that brings together project-level review and implementing activities from a number of sources, including the County Engineer and the County Departments of Airports, Planning, Sanitation and Flood Control, and Agriculture. Traditional regulatory planning programs, including zoning administration, subdivision regulation, and special use permits, are combined with Building Inspection into a new "Department of Land Use and Environmental Regulation" under the new Agency. The project-level impact analysis program is organized as a free-standing division reporting directly to the Agency Administrator.

Environmental analysis at this level is intended to utilize the data base and policy framework of the "systems level" analysis program within IPO; its role will be to "close the feedback loop" in environmental planning by providing ongoing monitoring of activities on a day-to-day basis. By relating the project-level EIR to a larger-scale program, the intent is to cut down on the need for documentation on individual projects, removing the burden of regional and subregional matters from the report, except when the broad-scale criteria are not satisfied by the project and an environmental "variance" is needed.

It is too soon to guess how well this organizational structure will work; but it represents a major departure from the traditional patterns of management of planning and environmental regulation in local government, and will bear further close examination, particularly in any further consideration by the State of statutory change in the organizational requirements for local planning.

SAUSALITO

The City of Sausalito has maintained the same process as before; no major approvals have emerged from its EIR process. One project has been denied on environmental grounds; one zoning proposal has been denied; one project has been withdrawn by the applicant; and one major project is still pending. According to the Planning Director, Herb Case, the EIR has introduced significant delays in the approval process, though it has not been the sole basis for delays, which may have been sustained under the old planning approval procedures, particularly in view of the high amount of public interest and resistance that have been present. An indication of the political interest in the City's development pressures (and in the forces aligned on both sides) has been the appearance of two full page articles on Sausalito and its planning issues in the San Francisco Chronicle, a major Bay Area daily paper. These appeared in February 1975, and very probably influenced the course of the project reviews, as well as City Council campaigns that were underway at the time. A Council majority opposed to the planned developments was elected in March. The EIRs on the projects contributed to the debate by providing information about the implications of the projects for the future of the City. The net effect of the EIR in this jurisdiction has been to support a change in the criteria for plan selection and review; change in public attitude, only partly attributable to the EIR process, has in effect resulted in filtering out the old pending proposals, though it has not yet laid the ground for an acceptable pattern of alternatives for the undeveloped lands of the City.

DEL MAR

The City of Del Mar has also maintained essentially the same status as outlined in the earlier report; no use of the EIR process has been made in the past year because of a building moratorium pending the completion of a General Plan revision. The plan has been adopted and the moratorium will end on July 18. It is expected that a number of proposals and EIR requirements will come forward soon thereafter.

One significant change in Del Mar's process is that the "sole source" feature has been given up in favor of an approach similar to that of Sausalito. This change was made for two reasons: an additional qualified consultant has been identified by the City, and the list may expand to three prior to the July 18 date; a further consideration is that a choice of consultants was considered more equitable to the applicant.

The City's intention is to require that a draft "environmental assessment" be prepared by the applicant, which will contain quantitative information about the site (i.e., data base), while excluding qualitative judgmental consideration of the information. This will accompany a definite project proposal, with somewhat detailed site utilization plans included by the developer. The City will assume responsibility for preparation of alternatives and mitigation measures, and these will figure as the principal emphasis of the EIR consultant's work. Selection of the consultant is expected to be on the basis of cost estimates for the work, rather than on a technical proposal for service to be provided.

Advance consideration of environmental factors in the developer's planning is to be taken into account through an "environmental reconnaissance," which involves meetings with staff, with environmental groups, and with civic and neighborhood groups to determine critical concerns prior to the development of a project plan.

SANTA CLARA

In Santa Clara County, the status of the system for private development projects has remained the same. Building activity was slow for most of the past year due to economic conditions of the industry. During recent months it has begun to pick up again, but the management of the environmental review process, as before, is largely in the hands of the private development and financial interests themselves. Approximately one EIR per month is now being processed, and these are almost entirely "non-negotiable" projects, such as gravel pits, or other extractive operations, which in any case require environmental analysis, according to County criteria. Richard Hall, the program manager for the County, feels that better-designed projects are now coming forward from applicants; this results substantially from the influence exerted by the financial community, which is reluctant to get involved in any projects that appear to have potential problems. Banks carry out some reconnaissance on their own initiative, in addition to requesting it of construction loan applicants.

Staff of the EIR program has been increased to four persons in the past year, primarily to service a broader "master EIR" program for the cities within the County, a program that is now under development, and is about to be implemented. The basic authority for this program is Bozung v. LAFCO, a State Supreme Court case, decided in January 1975. This ruling requires that "Local Agency Formation Commissions" (LAFCOs) prepare EIRs on changes in boundaries of cities or other local agencies, which they are responsible for monitoring and regulating. The County Planning Department formally serves as staff to LAFCO for environmental purposes. Because the effects of boundary changes are large in scale generally, and tend to have only indirect effects, the EIR program developed for this purpose by Hall and his staff has focused on growth-inducing effects and "spillover" effects, such as the need for housing in surrounding municipalities to serve the needs of, for example, a proposed industrial park.

As in its approach to private development projects, the County has undertaken to delegate the EIR work to the operating agents, which are the cities in the case of the MEIR. Three such analyses have been prepared so far. In one case, a preliminary analysis of the total housing impact of all planned industrial areas in the City of San Jose shows that total build-out would result in an overall population growth of San Jose and the surrounding area of one million persons. The analysis showed that this growth would "export bedrooms" all over the region. According to Hall, the City of San Jose itself was surprised at its own conclusions, and has now undertaken studies of possible alternative plans for industrial development.

This particular example indicates that creative use of CEQA and the EIR process can help to make pre-planning studies more relevant and useful. It also suggests, together with other aspects of Santa Clara County's EIR program, that criticisms representing the EIR process as simply "after-the-fact" analysis and "wrong end of the telescope" thinking may be somewhat premature.

The environmental data base for the MEIRs now being implemented in Santa Clara County will be the urban service area of each city in the County, part of which in each case includes unincorporated area. The information is divided into two types of "accounts": physical resources accounts and service system accounts. The former include categorization of each part of the service area with regard to whether it is developed or undeveloped, whether it includes factors of development constraint (flood potential, steep slopes, etc.), whether it has deficient services, and whether it has policy constraints (e.g., agricultural lands). "Service System Accounts" include the presence or absence of adequate water and sewer services, traffic and circulation access, schools, and flood control/drainage access.

IRVINE

In the City of Irvine, a professional services procedure has been developed that provides for a Request for Proposals (RFP) to be circulated to firms considered by the City to be qualified to prepare a given EIR. Selection of the consultant and management of the EIR project is carried out as a team effort involving the applicant, the Planning Department of the City, and the Public Works Department. Preliminary discussions are held to determine the scope of the EIR and the impacts to be addressed. After circulation of the RFP, a meeting is held in which the Planning Department makes a presentation on the EIR requirements of the proposed project to representatives of (usually) four or five responding consultants. Proposals are returned by the consultants in two or three weeks; they are given to the applicant and the Public Works Department for review and comments; final selection of the consultant is made by the Planning Director.

Efforts are made to begin the EIR very early in the project planning process, if possible yielding a preliminary EIR draft before detailed project planning is undertaken. Close contact is maintained between the management team and the consultant, and plan changes and mitigations are worked into the planning process as it proceeds in parallel with environmental analysis.

The Irvine Company, owner of the Irvine Ranch, has reorganized its own planning programs in parallel with the structure of the City's planning/EIR program. In this case, the private development sector (represented by the Irvine Company) is taking the initiative in proposing an "MEIR-type" system to allow for simplifying the EIR process and the documentation on specific projects. The Company controls 85% of the land within the City, and thus is the applicant in the vast majority of cases. It has offered to assist in the City's EIR process and to review the work of the City's consultants, since the Company often has detailed knowledge of the land on a given site, and can catch technical errors. The next step, now under discussion, is to systematize the data bases on different scales, so that the same information will not have to be entirely repeated two to five times at different steps of the planning and review process (village plan, conceptual urban site design, tentative map, detailed site design, building permit). If all details were included at each step, it would require a geometric progression of increased paperwork, since the size of the area considered in the EIR would decrease, and more "projects" would be involved at later stages. The Company is presently offering to assist in reforming the process, pointing out that the management program now used was invented locally, and can just as well be adapted again to fit new needs and workloads. The City is somewhat reluctant, since it "doesn't have the staff," and is too busy implementing the present program. In effect the City does, however, have access to the much greater planning staff resources of the Company, if a mutually advantageous arrangement can be made. A series of meetings is planned in summer 1975 to work out a new data management program; this may strengthen the collaboration between public and private planning in the City.

A further note of related interest in the Irvine Company's EIR program is an experiment underway in the adjacent city of Newport Beach. There, the Company's land holdings are in much smaller and more scattered parcels. The approach to development planning for these parcels is to proceed with data base preparations prior to any planning (which brings to mind Del Mar's new requirement). The collected environmental information is given to a design consultant hired by the Company. After the design is completed, "phase two" of the environmental program begins: an EIR consultant is hired to analyze how well the design responds to the data of "phase one." The details of how this program will interface with the City's environmental review are now being worked out jointly with the City.

It is incidentally of interest here that the Irvine Company's innovative efforts in environmental quality management are by no means philanthropic. The product they advertise for sale is a high quality living and working environment, and their clientele has proved to be well-informed on the subject. The local public, both on and off the Ranch, are aggressive on environmental subjects; there are localities nearby where confrontation is "out of hand" from the industry's point of view, with developers and city government in opposite corners, and with the cities standing up for a perceived demand by the local electorate for them to flatly oppose growth and development.

The role of the private sector in self-regulation, and the specific case of the Irvine Company, are considered again in Section IX.

SACRAMENTO COUNTY

An important further type of EIR management approach not discussed in the prior report is the case where the process is substantially or entirely internalized in the local government, and EIRs are prepared and processed as an inhouse staff activity. The County of Sacramento provides a good illustration. This jurisdiction, like San Diego County, was well prepared for the Friends of Mammoth decision due to the establishment a year earlier of an "Environmental Task Force" made up of staff professionals from various County departments. The purpose of this group was to study the planning process and find means of including the consideration of physical environment, economic, and social factors in planning and ongoing decisionmaking. (A second purpose was to explore the potential uses of computer mapping in the process.)

According to Charles Frank, who was a Task Force participant and later became the County's Environmental Coordinator, the group effort was valuable as a training exercise and as an intra-governmental communications program. And it accomplished its "process planning" task. In the spring of 1973, several environmental specialists were hired (chiefly recent graduates of physical and biological science programs) to carry out the EIR program. Once the program was underway, an economist was added to the staff to analyse the impact of projects on the employment base of the County. Part of the intent of this step was to eventually expand into broader fiscal impact studies (in accord with the Task Force concepts); this is now being pursued through a $40,000 State grant to the County for a study of methodologies for the analysis of the fiscal impact of projects on public services. It is anticipated a third phase of expansion into social impact analysis will be pursued next.

One ongoing characteristic of Sacramento County's EIR process has been an emphasis on brief reports that build upon past studies, and that focus on the specific issues and data that are of concern to the proposed project. The staff consciously tries to avoid redundancy and repetitiousness of reports, for purposes of process efficiency as well as for brevity and usefulness of individual reports. The program has thus, in an operational sense, been somewhat like a "Master EIR" approach from the beginning. Much of the judgment of what is important and what is redundant has been a matter of staff discretion. Applicants generally have had little to do with the process.

Frank has noted, in describing the original staff effort that set up the EIR system, that a great deal can be accomplished for the local environment by an intra-governmental team--even without specific environmental expertise--if it is well-balanced, and is reasonably free to invent suitable approaches. He states, "most local agencies don't know what power they have on their staff." The total cost to the County of the year-long Task Force effort was $50,000. A similar amount was spent by the County of San Diego in its year of preliminary work in 1970-71, though the emphasis in the latter case (and the budget) went more heavily to joint efforts with the local academic and professional community.

AN OVERVIEW OF LOCAL DIVERSITY

A conclusion to be drawn from this discussion is that some localities are aggressively pursuing their own innovative programs, assembling environmental quality control systems in the absence of State or Federal support or intervention. Innovations are based in part on the EIR program, in various combinations with the traditional land use planning apparatus; although not discussed here, there are also diverse relationships with the more directly functional programs of environmental control. In San Diego County, for example, the County participates in intergovernmental team efforts in solid waste planning and in long term air quality maintenance, among others; one intent of the County's new approach to EIR management is to put the review into close contact with operational programs in these related subject areas.

Areawide "Councils of Government" are a further feature of diversity in environmental planning not discussed here; in San Diego and in the Bay Area they have taken active roles in reviewing EIRs and in offering assistance with (and coordination among) local EIR management programs. More usually such "COG" agencies have a passive role of *pro forma* review, or of merely forwarding documents sent to them.

The various factors of present difference among local government processes (together with differences in perceived needs and in local willingness to respond) suggest it would be difficult for the State to impose an effective, homogeneous program at present unless the purpose of the control is to thwart adaptive response of government at the local level.

A potentially productive view of local differences is to regard local programs as diversified experiments, each seeking ways of organizing State and Federal regulatory programs in useful ways--and adding on some appropriate local elements. The more aggressive cases, including those described here, may serve the State as laboratories in the same sense that California serves national program development. The others are interesting and important, but the key problem for legislators and central administrators is to foresee and help shape the future, and the future is happening in some places faster than others.

Among the examples discussed here, the County of Santa Clara and the Irvine Company represent two rather different sources of initiative both leading to an emphasis on developer-centered, environmentally-based planning and design. In Newport Beach, the Company is assuming, at its own initiative, the role that Santa Clara County tends to require of developers in dealing with individual sites. In its relationship with the City of Irvine, on the other hand, the Company is offering its own data base and staff services to help initiate a larger scale "master EIR" approach analogous to the system Santa Clara County is working out in dealing with cities within the County.

Entirely different styles of operation and directions of evolution are represented by the Counties of San Diego and Sacramento. Both have government-centered programs which are actively engaged (in somewhat different ways) in using the EIR system to attack broader administrative problems involving a full spectrum of environmental, social, and economic concerns. In Sacramento County, the emphasis is on evolving the technology of the process; the target is a general "impact analysis," as opposed to "environmental impact" analysis. In San Diego County, on the other hand, the emphasis is on full-scale reform of government; the target is integrated planning, and integrated project review; and the EIR program now follows that organizational split.

In the cities of Sausalito, Del Mar, and Irvine, on the other hand, government resources are limited, but the scale of projects is large enough to impact the total landscape of the municipality. In each of these cases, the EIR system is formally segregated as a unit of the planning program, but in fact is comparatively well integrated with planning and with the full government system. A full range of social and economic considerations is incorporated into each EIR, and thus into government (on an ad hoc basis) for each project.

Diverse programs such as these could be identified and adopted by the State as intentional experiments deserving of observation, commendation, and advertising to other localities that may be attempting to deal with similar organizational or technical problems. Use of such models has been practiced widely by State and Federal government in the past, but too often through means of merely supplying funds for local "demonstration" programs; such funds can turn out to be an unnecessary form of intervention.[67] While some judicious extra support may be useful, as in Sacramento County, the jurisdictions named here are generally doing rather well with their own resources; they could perhaps benefit from public notice, however, and from improved contact and communication with other governmental agencies.

SECTION VII

ROLE OF THE EIR IN A SELF-REGULATING SYSTEM

TOWARD A "QUIET COUNTERREVOLUTION"

The "Quiet Revolution" in land use control that gained momentum during the 1960s was foreshadowed by a shortage of local dialogue--by a lack of balancing institutions, and an inadequate consideration of broader public needs in land use decisions. Dialogue and balancing were thus carried up to the areawide or State level instead. In California, the San Francisco Bay Conservation and Development Commission--a case study discussed in the original Quiet Revolution document--was a product of citizen intervention. Its apparent success has now been propagated statewide through the Coastal Zone Conservation Commissions--which are further products of citizen intervention, and are very active forums themselves for public dialogue about land use.

Meanwhile, dialogue has become important, and even dominant in the processes of local land use decisionmaking in California. New kinds of citizen groups have come forward. Their presence, together with new planning and regulatory tools, provide entirely new kinds of opportunities to reestablish local responsibility for, and local control over the regulatory process.

Without fanfare, some localities have begun to put together processes that may be deserving of accreditation by State and Federal agencies, and deserving of the confidence of their own communities. While these are not necessarily conscious efforts to regain the "upper hand," they represent a reversal of the quiet revolution momentum toward centralization of decisionmaking authority.

This section discusses the role the EIR has played, or can play, in the development of locally-centered responsibility for self-regulation of environmental quality. Since the present report emphasizes the value of dialogue, this section is organized to present the subject from the points of view of four different participants in the local dialogue:

(1) the environmental manager;

(2) the decisionmaker;

(3) the developer; and

(4) the citizen activist.

THE ENVIRONMENTAL MANAGER'S VIEWPOINT

Activist administrators of CEQA might take as their motto the following paraphrase of a familiar slogan:[68] "Process is our Most Important Product." CEQA provides little in the way of new authority (and it has been severely criticized for that reason). It has generated a great deal of process, however. The process has expanded upon local administrators' capability to utilize and manage existing authority. CEQA can offer the opportunity, from the public official's view, of a flexible management tool for reshaping the decisionmaking process, and more broadly for dealing with other fragmentary programs of the land use control apparatus.

Whereas CEQA seemed at the outset of its use to be simply one more complicating factor, it may after all contribute significantly to local government's ability to cope with the "double bind" of pressure from the public, and regulatory demands from State and Federal government.

Impact analysis and review of the many superimposed plans of various local agencies provides the opportunity not only for public review, cross-comparison, and challenge of plans; it offers agencies themselves the opportunity to participate in each other's planning as part of a responding public.

Furthermore, in some localities the use of the EIR has spawned a healthy competition among subunits of a single local government. This competition may emerge from the establishment of the EIR management process as an advocate for the environment:

> "The premise behind this organizational form is that the relationship between orderly development and environment quality can best be understood and dealt with by building into the government system a strong proponent for conservation and another for development. Then the elected public officials can take from both of their strategies to mold the best public policy bearing on that relationship. This adversary technique, of course, has been the central rationale and means for obtaining justice in our court system."[69]

In the City of San Francisco, it was decided early in implementing CEQA that the Department of Public Works would not be the lead agency for its own EIRs. The Board of Supervisors decided the DPW would be self-serving in preparing its own statements. The Planning Department was instead given the responsibility. According to the former Planning Director, Allan Jacobs, the Department has received "incredible help" from other agencies, and in turn it has "given them a hard time." Jacobs reports that the Public Works Director at one point said: "Allan, you can stop anything I want to do; so let's get together and start to do something on the positive side."[70]

A variety of interests and purposes are represented within a municipal government. An advocate form of EIR may help provide even elected officials with access to alternatives, or to differences of opinion within staff that may otherwise be submerged by the executive or resolved on arbitrary grounds.

Unlike most other tasks and planning or control requirements, the EIR is not (so far) burdened by tradition or by specified structural mechanisms; and most important to budget-squeezed administrators, the process does not necessarily have to be carried out by existing staff. The EIR process brings its own source of revenue in providing a "pass-through" to the applicant of the agency's costs for preparation and/or processing of an EIR.

Applicants may be taxed a "reasonable fee;" administrators have consequently been able to hire new staff or consultants as needed. To the extent the EIR process contributes to overall land use management effectiveness of the agency, it can thus be a net relief to the organization.

Provided one's credibility with politicians and public constituents can be maintained, a manager can be somewhat selective in determining what is analyzed in an EIR, and hence, what role it plays more broadly in local land use controls. That is, one may be somewhat entrepreneurial in assembling the EIR into a package of controls appropriate to local circumstances. Such specialized local shaping may be understood in the name of responding to public demands; and it may be pursued in principle from a variety of positions--by elected officials, by administrative officers, or by public activists--through focusing personal energies or political pressure.

In the City of Sausalito, the EIR has provided the principal means of funding needed planning studies. Major thorough investigations of traffic flow and other features of City planning were undertaken at developers' expense under the authority of CEQA. The State Planning Act provides the same authority to "require any needed information" prior to approval of development proposals. However, the precedent and public support for broadly-based analyses was uncommon under the Planning Act authority in Sausalito or anywhere else. Under CEQA, they are not unusual at all. Public attention to the EIR thus enables implementation of an authority that in fact may have existed previously.

In Santa Clara County, the mere existence of the EIR requirement has affected the planning activities of developers themselves. And in the same jurisdiction, an interface is developing between the County and the cities within it, through LAFCO and the Master EIR process, which in effect is causing the cities to re-evaluate their own planning.

To the extent local agencies such as these have succeeded in developing modes of operation that internally link land use control programs, they have independently gone beyond the Legislature and the State administration in moving toward integrated systems of land use control. Since the passage of AB 889, the Legislature has enacted a law establishing an energy commission for the State, but has otherwise remained comparatively inactive in the field of land use and environmental control.

Leadership in these fields is thus emerging at present from the local, and not from the areawide or state level of government in California. This is partly due to local initiative, and partly a practical matter of local administrators being forced to do many things at once; they alone are obliged on a day-to-day basis to assign resources to manage a variety of shifting land use management and planning requirements, while also applying those some requirements to the handling of specific project proposals coming in the door of the agency.

THE DECISION MAKER'S VIEWPOINT

The environmental impact report itself can be of use to decisionmakers, but chances are that little of the detail will be read by the majority of elected officials. This has been a source of frustration, since the reports are ostensibly prepared for their use in evaluating tradeoffs and alternatives. As may be expected, only controversial documents draw real attention at the decisionmaking level; the rest tend to be ignored.

Criticism by elected officials and others of the "excessive and redundant paperwork" entailed in the EIR process may, however, overlook the point that much of the documentation is little more than an administrative record of often-complex proceedings to which the elected official may or may not have been a party. The record is elaborate in part because elected officials are less likely than under the old system to personally participate in negotiations with the applicant; far more regulations and other factors of consideration are involved than was formerly the case; more actors are party to the process; and if litigation is known to be a possibility, administrators may want to have a fully-documented record for their own protection.

The EIR on specific local issues has permitted much resolution of conflict in local land use issues to be delegated to an administrative process, wherein a significant proportion of controversy (much of which is technical in character) can be resolved through administrative hearings, reviews of documents, negotiations, and altering of proposals. The results emerge in the form of technical documents and an administrative record of the review process, which together constitute the Environmental Impact Report. Access to the process is provided throughout, and appeal of the result is available to all at the end of the process.

Resolving conflict requires that there be parties to an issue, and if possible, that positions be well-framed on both (or all) sides. By providing a focus for participation, the EIR process has become a medium for articulating a public or "environmentalist" position. The existence of better-framed issues, and better articulated public positions is a major new factor that increasingly allows municipal officials to

> manage change in the field of environment and...to balance environmental decisions with employment, adequate housing, and economic stability.[71]

Lacking an appropriate process and a balancing infrastructure, land use controls in some localities previously bore the possibility of stagnation through endless, contentious public hearings, or series of such public hearings. On such occasions, the panel of decisionmaking officials were required to listen to conflicting, redundant, and often irrelevant testimony, while mentally attempting to frame the issues and evaluate tradeoffs implied by the decision. At the end of the hearing they were asked to vote.

The difference between that process and the more focused process that is now possible may be compared to a civil court action, first without legal counsel, and then with it. The role of counsel is to question testimony, cross examine witnesses, ask for supporting facts, and generally frame the issues and positions for the plaintiff as well as for the defense. The EIR now performs some of these roles for political decisions--or rather, it organizes a process that can provide these roles. And with it, decisionmakers are granted an improved likelihood of following a somewhat structured debate. Moreover, they have available the option of delegating the hearing of much of the testimony to professional administrators. As a consequence, many technical matters can be resolved ahead of time without their participation; and there is a potentiality that the policymakers may be allowed to direct more of their attention than before to the policy content of the decisions. Their functions as legislators may be enhanced; their personal involvement in technical issues and in negotiations with applicants is optional.

The EIR process enhances the decisionmakers participacion in long range planning. Peter Drucker has stated that "long rang planning does not deal with future decisions. It deals with the futurity of present decisions" (original emphasis). In this light, analysis of present decisions as undertaken by the EIR process may be viewed by decisionmakers as providing information in support of an ongoing planning process:

> Decisions exist only in the present. The question that faces the long-range planner is not what we should do tomorrow. It is: what do we have to do today to be ready for an uncertain tomorrow? The question is not what will happen in the future. It is: what futurity do we have to factor into our present thinking and doing, what time-spans do we have to consider, and how do we converge them to a simultaneous decision in the present?
>
> Decision making is essentially a time machine which synchronizes into one present a great number of divergent time-spans. This is, I think, something which we are only learning now. Our approach today still tends toward the making of plans for something we will decide to do in the future. This may be a very entertaining exercise, but it is a futile one.
>
> Again, long-range planning is necessary because we can make decisions only in the present; the rest are

> pious intentions. And yet we cannot make decisions for the present alone; the most expedient, most opportunist decision--let alone the decision not to decide--may commit us on a long-range basis, if not permanently and irrevocably.[72]

A directly comparable view from a local policymaker is given by former City Councilman (now County Supervisor) Jim Bates of San Diego:

> The EIR is invaluable. It gives you a long range view that you can hang something on. It's good for blocking at times--gives time to develop an opinion, instead of the old 'gut reaction.' There are too many reports. We need a system of flagging important ones ahead of time, so councilmen themselves can take the initiative to appeal them and bring in the people. The EIR is the planning process in the City of San Diego.[73]

Having a long range view of a given decision, and a basis for stopping the project, one may have at hand a strong basis for linking decisions to policies--a connection that has been difficult to achieve under the land use control system that relies on zoning and the general plan. A principal reason for the effectiveness of this linkage (where it occurs) is that possible denial of an application on policy grounds--or the possible conditioning of decisions on such grounds--provides the applicant with a strong incentive to try to understand and accommodate applicable policies into his or her own planning, in order to forestall later problems. This reverses the logic of the traditional general plan approach to land use control.

The EIR process can force the detailed consideration of tradeoffs into the political arena, where it may properly belong. Some decisionmakers may be unwilling or unready to accept the responsibility of deciding issues based on a full public knowledge of the facts and the tradeoffs; others are anxious to take the responsibility seriously, and may actively use the EIR process to try to marshall competent arguments on both sides of issues.

One peculiar (and not unusual) form of criticism[74] of the EIR as a decisionmaking document is that it may fail to go far enough, even for some elected officials, in indicating what decision should be made. Granted the exposure that the EIR and public participation can give to the decision process, many elected officials may prefer to point to the EIR as the responsible agent in controversial decisions. The State Attorney General's position on "duty to perform" would support this attitude. However, this imposes the responsibility, together with potential legal liability in some instances, on staff and consultants--burdens they may wish to avoid, and which can add to the already over-cautious procedures and requirements observed by many agencies.

Before the EIR could ever be accepted and utilized on a broad, uniform basis Statewide, it appears it would have to await the gradual processes of electoral politics and/or the gradual change and adaptation of individual decisionmakers--as well as planning staff, legal counsel, and local developers--to new modes of operation in conducting public business. Meanwhile, there will be a wide spectrum of reasons for resistance to the process, many of which may be addressed and solved in explicit technical detail without removing a more basic political problem of unfamiliarity with the idea of conducting public business in an open forum with full information available to all participants and observers.

THE DEVELOPER'S VIEWPOINT

A key difference among the alternative approaches described in the previous section is in the degree of participation in the EIR process allowed or asked of the developer. In Sacramento County's program, developers have comparatively little opportunity to participant in the EIR process, since it is an inhouse activity in the government. Charles Frank stated a year after implementation of AB 889 that developers from Los Angeles and San Francisco were having an easier time than local developers in satisfying the County's environmental criteria--presumably because they had been more directly involved in the process elsewhere, and had learned what is required from the standpoint of information as well as design.

If the rules of development are definitely changed by CEQA (and many other new influences) then it clearly is in the developer's interest to learn what the new rules are, and how they may be satisfied. At the same time, it is in the government's (and the public's) interest to have environmentally sensitive designs coming in the door of the local agency to begin with, rather than seeking to change or mitigate them after time, money, and a hard-to-define factor of professional commitment are already invested. The participation of the developer in the EIR process may be useful to the governmental agency for its preventative, rather than its curative values.

From the developer's standpoint, Del Mar, Sausalito, and Irvine are not formally very different from Sacramento County in their concern for maintaining close control over the process, which tends to exclude participation. The main apparent difference is that these cities are small and can't afford to keep a balanced environmental staff on hand, waiting for projects to analyze. In each of these three cities, environmental protection is politically important. Developers have tended to respond by hiring their own environmental design professionals, and thus are able to argue--and market--their proposals on grounds of their environmental sensitivity. In Irvine, the industry itself (by virtue of its uniquely unified organization there) is ahead of the regulators in seeking better ways of organizing and managing the processes of planning and regulation.

In Santa Clara County, on the other hand, the processes are closely controlled, but their use is minimized. That is done by explicitly encouraging applicants to satisfy the policy intent of the law at their own initiative. This differs from most of the others in that the "raindance effect" of going through pro forma analysis of well-understood or environmentally-satisfactory project proposals is consciously avoided; environmental sensitivity in the conceptual design and planning phases of a project can pay off particularly well for a developer in this kind of system, because he can avoid some of the (real or perceived) uncertainty introduced by exposure to the formal EIR process. Some time may be saved, and the expense of private analysis is not re-duplicated after-the-fact in a second analysis by the agency.

Deputy Attorney General Nicholas Yost has observed[75] that private entrepreneurs in the development business have two basic desires in facing the governmental regulatory system with a development proposal: (1) flexibility; and (2) certainty. It is important to be able to keep details open to change, in order to meet changing sales and financial markets. At the same time, it is important to minimize the risk of "arbitrary" change of a project due to changing governmental regulations. The EIR process tends to serve both needs by getting away from prescriptive planning and regulatory controls, while getting toward focusing on the merits of the project itself as a specific , here-and-now means of implementing public policy toward land use.

Developers are basically willing to do whatever is needed to satisfy the rules; but they need to know what the rules are, and that has been a shifting ground in the past few years. William Matuszeski of the Council on Environmental Quality staff has noted[76] that the environmental analysis processes are in this sense a definite value to developers, because they remove a degree of arbitrariness that had entered the approval process through the introduction of a wide variety of new regulatory controls. He states, "getting away from the old rules was a setback for 'predictability.' The environmental impact statement gives him something back in." If the real intent of the law is to improve the quality of the human environment, there are many ways to address that criterion and to argue that it has been addressed in a specific project. And efforts to move in this direction are by no means incompatible with the developer's business at hand--which is to generate marketable environments, and to make a profit at it.

The philosophy of delegation illustrated by Santa Clara County pragmatically recognizes that land use planning in our system of ownership and entrepreneurship in fact resides largely in the hands of individuals and organizations who can initiate an action by putting together a piece of property, a proposed use, a financial package, and a set of required approvals. They may be private individuals, business corporations, or government agencies. Under the old rules, it was advantageous for such "developers" to understand the system in order to get around it. Project planning tended to work directly against public general planning, in order to satisfy narrowly-drawn economic criteria. In using land, the greatest advantage was found in minimizing the cost of the land. Thus, public roads went through public parks and low-rent districts; and private development projects went wherever economic gains could be maximized through a plan change, a zoning change, or a zoning variance. The formal public planning and zoning system had the effect of announcing where the maximum unearned profits could be made, while excluding those who lacked the political or economic power needed to change the plans.

Under the new rules, there is a degree of correspondence between developers' interests and the general public interest. A further reason for this is that "new towns" and other large scale projects have become quantitatively important in recent years. Because of this, and for other reasons having to do with the internal workings of the banking system, financial institutions have increasingly joined large projects at the outset (or initiated them) as equity participants and as long-term sources of venture capital. At the same time, the perspective of the "developer" is increasingly that of a corporate officer or employee protecting a long term interest, rather than a private entrepreneur seeking a short term profit. These various factors all affect the overall points of view of development within the housing and home finance industries, and may affect the conditions of operation of individual entrepreneurs as well.

Oakley Hunter, Chairman and President of the Federal National Mortgage Association ("Fannie Mae"), has indicated that the entire private sector involved in the development process may be in for some intentional reorientation to increase its general sensitivity to long term public needs--and to the protection of long term financial investments. He recently stated, during an FNMA-sponsored national conference on urban environmental needs, that

> Fannie Mae is trying to develop policies that will encourage local banks to take a more active role in shaping the future of the total community. We recognize that our policies and decisions in the secondary mortgage market have an important influence on the lending practices of banks, and therefore on the development practices of private entrepreneurs. We are now looking for ways to utilize our role in a more positive sense.[77]

According to Hunter, FNMA is thinking in terms of specific criteria for the acceptability of mortgages; these could include features of technical design, and of social or physical environment impact.

The indirect controlling effects of policies and regulations through another medium, legal counsel, is reflected in the comment of an attorney who is active in representing developers before one of the State Coastal Zone Conservation Commissions: "I've turned down more developments in my office than the Commission has voted down."[78]

More broadly, the stabilizing effects of the "new rules" upon the development process are reflected in the statement at the time of the Friends of Mammoth decision of "a vice president of Kaufman & Broad, one of the State's largest homebuilders, who pointed out that the decision would be beneficial in the long run, since it would tend to penalize only the 'fast-buck' operators who were able to undersell responsible housing producers under the old rules; under the Mammoth ruling, all builders would be in the same position.[79]

THE CITIZEN ACTIVIST'S VIEWPOINT

The EIR process has significantly simplified the public role in environmental issues (at least from the activist's point of view) through the procedures of notice and review. There are several ways in which the EIR serves as a tool for monitoring and intervening in issues:

- by providing public notice at predictable points of project proposal development;
- by providing the public with an informative and responsive informational medium to deal with, rather than simply soliciting open ended comments;
- by making questions, and the responses to them, mutually available to participants in the EIR review process;
- by thus greatly reducing the need for time-consuming testimony in public hearing, and hence making it more possible for skilled and busy citizens to take part;
- by revealing costs and effects in detail for public judgment;
- by minimizing the professional "mystique" that commonly has in the past clothed public presentation of plans for land use as well as for engineering projects; and
- by providing a reviewable record through which the courts may be enabled to make a finding of abuse of discretion.

The EIR has a consistent form and character over a span of highly variable issues. The subject of its analysis and discussion may range from flood channels to recreational vehicle parks to community plans to components of sewage treatment facilities. In each case, the EIR is a finite report of somewhat consistent format. And it is governed by a consistent pattern of case law--precedents for which are established almost entirely by citizen actions.

From the viewpoint of participating citizens, each issue or planning program for which an EIR is prepared follows a more or less standard pattern. This is important, because items that are equivalent for EIR purposes may be highly variable in character from a "planning" or engineering perspective; different types of items (subdivisions, roads, mosquito abatement programs) were previously handled by various means that suited the convenience of local administrators. With the EIR as a framing device, there now are characteristic times for analysis, times for lobbying, and times for intervention. Some of the characteristic steps may be present or absent in specific project or plan histories, depending on how "open" the planning process is; in each case the process evolves toward a point of acceptance of the final EIR (often preceded by recycling of the planning/analysis routine); this is followed by a discussion of the merits of the plan or project before the responsible decision-making body. At such hearings, individual citizens and their organizations often hold a strong position:

- they have extensive knowledge of local history, project history, and existing conditions;
- they may be backed up by such professional experts on the subject as may be available locally;
- they are probably local voters.

At any point along the way the process may be aborted, in which case it dissolves, for public activist purposes, back into the milieu of pending activities. Meanwhile there are plenty of other matters for citizen activists to attend to, and the EIR process may now be counted on to alert them when the issue or plan surfaces again.

If a decision on a given issue is important enough, and if the decision goes against the perceived "public interest," the courts are available. The schedule of steps to adjudication is well known, or can be readily found out. There are many potential sources of legal aid, including public counsel of other affected jurisdictions, the State Attorney General's office,[80] several "public interest law" organizations, and private attorneys, who are increasingly interested in taking up cases since the establishment of the legal principle that "private attorneys general" are entitled to recover fees in successful cases on behalf of the public.[81]

The entire spectrum of program steps, documents, and resources related to the EIR now constitutes in California a very substantial and well-defined tool available to any aggrieved individual. The overall shape of the EIR tool and its potential uses are known and remain constant with time, except that it is refined and improved with use. Its application is broad, encompassing virtually any public or private action of environmental significance. Its applicability to any given situation is in essence proportional to the public's interest in the case. This is measured by:

- the number and qualifications of individuals willing to study documents, prepare testimony, and be heard;
- the willingness of project planners, bureaucrats, and decisionmakers to listen and adapt their actions; and
- the willingness of attorneys and courts to go along with or challenge the outcome.

Broader areawide or State (and sometimes national) interests are represented by the participation of adjacent communities, regional bodies, and groups such as the Environmental Defense Fund, the Sierra Club, and the Attorney General's Environment Unit. In extraordinary cases, the State Legislature or the Governor's Office may take an interest; in the final analysis, direct appeal to the voters is possible through California's initiative process. In essence, the whole public is potentially party to an EIR process. Participation on a given initiative depends on who is involved, and what interests they may represent. An important factor is the number of new participants who aspire to represent a general public interest, including a number of public interest professional organizations.

The EIR provides documentation of a decision in such a way that citizens can later draw attention to the decision record if arbitrariness creeps into its implementation. One may expect to be notified if the decision is to be significantly altered; under the old system it was much easier for officials to make a decision in public hearing and later alter it by administrative action.

Melvin B. Mogulof, in a discussion of the closely-related "citizen advocacy" role before the Coastal Commissions, has pointed out that the needs and interests of Commissioners and advocates are complementary; advocates should hence be valued, and encouraged in the role they play:

> California's experience with coastal advocacy suggests a number of things to states which may wish to emulate it. One, begin with legislation whose bias is clear--even environmentalists find it more fun to labor in a winning cause; two, establish procedures which incorporate advocates into the decision process. Give them "standing" -- prize the spark and contest they give to the proceedings of the land use agency. Recognize that they frame the issue, and in so doing permit the commission members to occupy the middle--a much desired position by those in public life; and three, give them victories--the knowledge that the commission is listening, or votes as if it is listening, has a very salutary effect on the practice of advocacy.[82]

SECTION VIII

THE FUTURE OF THE EIR

SOLVING THE "PAPER POLLUTION" PROBLEM

A most urgent problem affecting the future of the EIR, and one that is widely recognized, is that of excessive and redundant documentation. There is no a priori reason why the process needs to generate excessive paper; this is confirmed by counterexamples such as Santa Clara County and Sacramento County, where the problem has been overcome, or is being actively worked on.

There are several sources of surplus paper, many of which are traceable to political or institutional problems, to the statute, or to the dynamics of the local implementation process. In general, things are happening too fast, and it is easy to ask for too much information, or for the same data more than once.

Legalistic, overly-cautious reading of the statute, the guidelines, and the case law is a major, general source of excessive local requirements, and of redundancy in the resulting documentation. One effect mentioned earlier is the "raindance" of repetitive analysis on similar projects. This may be overcome to a degree by larger scale "Master EIR" approaches, or through negotiation, ordinance, or traditional regulatory planning procedures for specific cases, once the general case is well enough understood. However, a lingering problem in a number of agencies that may wish to experiment along these lines is the definition of a "legally adequate EIR." Mention was made of the presumption of many public agency attorneys that every detail should be analyzed on each project in order to be completely "safe" in satisfying the law.

RECOMMENDATION: USE THE COURTS

There is no legal basis at present for direct attack on the problem of redundancy in specific cases. The prudent course for a City Attorney or County Counsel on the basis of the statute and existing case law is to ask for extra documentation when in doubt, as a means of protecting his or her client from citizen suit. EIR program managers may have little recourse in opposing this opinion before their policymakers or chief executives, and may end up asking for the documents despite their own judgment that part or all may be unnecessary.

One possible approach to countering this particular obstacle would be to foster a counterbalancing pattern of case law for the agency attorney to take into account in judging the need for the paperwork. The Federal Water Pollution Control Act, as amended in 1972 (P.L. 92-500, Section 101(F)), includes the following statement:

> It is the national policy that to the maximum extent possible the procedures utilized for implementing this Act shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

Had such a policy statement existed in CEQA, it is reasonable to assume that it (like other policy statements in CEQA) would by now be enforceable through an established pattern of case law, as discussed in Section IV. In this instance, litigation would most likely have been initiated by the development industry.

Granted appropriate cases to point to and discuss, developers (or EIR administrators, or elected officials) would by now be better equipped to stand behind a claim that specific analyses or documents are demonstrably unnecessary in specific situations. And agency attorneys might be better able to take both sides of the question into account in rendering a legal opinion.

There is little public opinion expressed anywhere in the State in favor of increased paperwork or procedures in the EIR process. Thus, it may be politically straightforward to test this particular approach; addition to CEQA of a policy statement such as the one quoted above would be less controversial than many other changes in the Act that are likely to be considered in the coming session of the State Legislature.

A somewhat reversed situation exists in the implementation of P.L. 92-500 itself. There is also a severe "paper pollution" problem under that act, as noted in later discussion in Section IX. In that instance, however, there is no "balancing infrastructure" at the local level. Since there is no constituency calling attention to the policy content of the law (unlike CEQA's situation), some of the policy purposes of P.L. 92-500 are overlooked, including the clause quoted.

PAYING FOR NON-EIR APPROACHES

In moving from rigid EIR requirements to more flexible uses of other approaches, including existing regulatory measures in the planning system, consideration should be given to a related "legalistic" point that constrains experimentation in some jurisdictions at the present time. Section 21089 of CEQA states:

> A public agency may charge and collect a reasonable fee from any person proposing a project subject to the provisions of this division in order to recover the estimated costs incurred by the public agency in preparing an environmental impact report for such project (emphasis added).

The statement implies that costs may not be "passed through" to the developer if the process undertaken does not lead to the preparation of a formal EIR. Thus agencies that rely upon this funding method to support environmental program staff are not encouraged to do anything but prepare formal EIR documents. Changing the underlined phrase to "environmental documents" could be a step in the direction of flexibility, since it would include the preparation of a "Negative Declaration," which is required in any case that does not need an EIR.

TECHNICAL FACTORS

There are factors having to do with the content of the report itself, any of which can divert the EIR process in specific instances and contribute extra paper. These may include efforts of applicants, of staff, or of consultants:

- to obfuscate, burying important facts or issues in a mass of irrelevant material;
- to try to give decisionmakers and the public an impression of technical thoroughness, although much of the material used may be merely recycled "boilerplate" information copied from other reports;
- to satisfy a whim or special interest of a policymaker, administrator, or influential outside reviewer.

Such effects may be countered to a degree by the legal "minimization" approach mentioned above. They may also be susceptible of solution or mitigation through dialogue and bargaining among local participants in the EIR process. It may require the combined efforts of developers, citizen groups, and government administrators to overcome the momentum of detailed, pro forma requirements. The simple accumulation of paper will force some points into confrontation and change; as noted in Section IV, "learning" should be a natural consequence of the accumulation of data, and local processes are likely to be unsettled if they fail to adapt and change as the information piles up. Granted a little assistance and guidance, many specific problems will work themselves out in time.

DIALOGUE

Dialogue among citizens groups, developers, and governmental agencies may be of considerable value in overcoming institutional sources of excessive paper--particularly if the participants are on similar footing in a "balanced institutional infrastructure." An example is the case of doubt over whether an EIR should be required. If a decision in this situation can be made unilaterally by legal counsel on the (not unusual) grounds of avoiding a citizen lawsuit, then it may be to everyone's advantage for the EIR administrator (or City Attorney) to be able to contact directly the likely litigants and settle out of court--possibly without unnecessary analysis and documentation.

The basis for dialogue--and thus for the solution of some forms of technical and institutional problems--is the gradual evolution of an organized public and professional constituency capable of serving as a responsible and responsive balancing element in the local infrastructure of institutions, representing and defending environmental quality considerations in local issues. Public education and professional education are needed in the development of a competent local environmental constituency. The EIR process itself has been a principal medium for that education--and for educating developers, planners, executive staff, and elected officials as well.

There may be less need for the EIR process as it now stands when it has served its educational purpose, and has infused other activities with an awareness of environmental needs and constraints. From the standpoint of another State or locality considering introducing an EIR process, it may be worth noting that the process has served a possibly irreplaceable role in California as a fast-acting, transient medium for education and for process change. Much past, present, and future change of the EIR process, and more broadly of the planning and decisionmaking processes, is simply reflective of the accumulation of information and of understanding on the part of all participants. The same changes may have happened without the EIR, but they certainly would not have happened as rapidly.

In evaluating the EIR process for their own use, other states should consider their own local needs, interests, and opportunities, and judge whether the EIR process may be useful as an interim measure while other, possibly more stable, processes are developed and evolved or emplaced into local government.

AN ENVIRONMENTAL AND GOVERNMENTAL EDUCATION PROGRAM

At the outset of the EIR program in California, there had been little prior experience of large scale programs in the State that spanned governmental and physical environment concerns; thus there were few experienced individuals available with broadly applicable training. These tended to be persons with experience in preparing NEPA statements (generally on large public works projects, however, not subdivisions), or the minority of professional planners with strong background in the physical sciences. Most EIR staff members newly hired into government jobs or private EIR firms after AB 889 brought to their work a knowledge of government or of the physical environment, but generally not of both. During the ensuing months and years, these individuals have engaged in intensive, full-time, mutual education; at the same time, their principal assigned task has been to educate government officials and the public about the environmental quality implications of pending local decisions. In order to do their work, they had to find out for themselves (with the help of decisionmakers, developers, the public, and staff of related governmental agencies) what the implications and impacts would be.

A high proportion of the total cost of California's EIR program has thus gone into professional salaries for individuals who were initially unprepared for their jobs. Over the past two years these individuals have become far more sophisticated in understanding the interrelationship between public policy, administrative actions of government, and environmental quality. The costs have been substantial, though rather small compared to the total cost of professional services for development activities in the State.

COSTS

In the City of San Diego, for example, a staff of twelve analysts in the Environmental unit monitored a total volume of $245 million in new construction in the City last year. The County of San Diego, meanwhile, had a staff of nine analysts; the total governmental staff for the City, the County government, and the twelve smaller cities within the county (including Del Mar) is at present probably in the range of 30 to 35 "full time equivalent" (FTE) analysts. Total construction volume last year in the entire area was $661 million, 11% of the State's total of $6 billion.[83]

It is difficult to estimate the number of consultants involved in the process; many are part time, or do consulting in addition to regular employment. The FTE number of EIR consultants is probably greater than the number of government analysts (in this area staff input to EIRs is fairly high by statewide standards) in the area, but not likely to be twice as great. Thus, the total number of FTE staff plus consultants involved in EIR preparation and processing is probably in the range of 60 to 100 for the San Diego area. That compares to approximately 800 civil engineers, 400 architects, and 40 landscape architects in the area--counting only fully-qualified professionals, many of whom in addition employ less-qualified staff.

The total number of environmental analysis professionals within San Diego County is thus probably in the range of 5% of the total number of design professionals in the area (not including planners, most of whom are government-employed). Relative "shares" of total construction costs are not likely to differ very much from this proportion overall, though they certainly differ for individual projects. (A calculation of EIR costs as a proportion of total professional service costs paid by developers should also include accountants, lawyers and realtors [there are 6700 licensed real estate brokers in San Diego County, and 23,500 real estate sales licensees, though many are inactive]. In proportion to the total service costs, the EIR share is a rather small increment on the average.)

Translating these figures into percentages of total construction cost yields a range of 0.25% to 0.5%; design fees commonly range from five to ten percent of individual project costs for sewage plants, roads, and individually-designed buildings (but less for standardized housing units). The Chamber of Commerce rule of thumb of $100 per housing unit for environmental analysis costs (quoted in Section VI) would by comparison add 0.25% to the cost of a $40,000 home. Comparing other cost estimates, this amount (0.25%) is the same as an informal estimate given by a large private developer of budget allocated for the EIR on an average project, allowing closer to 0.5% for controversial projects. A study of 700 NEPA statements on the East Coast[84] concluded the cost of an EIS on federal projects generally falls in the range of 0.1% to 0.4%.

Cross-checking the total San Diego County costs, the estimated range of 0.25% to 0.5% of total construction would yield $1.65 million to $3.3 million total cost for the EIR program in that area; assuming an arbitrary figure of 75 FTE professionals, this would allow $22,000 to $44,000 per individual for salaries, benefits and overhead. This is a reasonable range, noting that many are young and inexperienced, and salaries are not high by professional standards. The County Integrated Planning Organization budget of $2.18 million for 103 total staff averages $21,100 for salaries, benefits, services, and supplies. The City Environmental Quality Department budget of $250,000 for 12 analysts and three clerical staff averages $21,000 per analyst.

COST DECLINE

Several factors of change tend to decrease the direct cost of the EIR program with time. At the outset, the cost of delay of projects often was more damaging than the immediate cost of EIR preparation and processing. However, after two years the unpredictability of the process is largely ironed out; calculations and commitments are no longer made (or at least needn't be) in ignorance of environmental review consequences. The principal delay cost anymore is thus likely to be the cost of holding land while preliminary environmental analysis and review are undertaken.

A second factor is that the amount of impact analysis activity directly attributable to projects is decreasing. The program is "working its way back" into the planning process; in the County of San Diego, for example, the staff of nine analysts has been nearly evenly split in the division of the EIR program into "systems" level and "project" level analysis. The Integrated Planning Office now has five analysts working on plans, while the Community Services Agency has four people analyzing projects.

A third factor is the accumulation of skills and data bases. Two sources of cost and of frustration that are likely to be overcome with time are (1) the hesitancy of EIR administrators to commit themselves in identifying what they feel to be significant factors in individual projects; and (2) failure of staff to collect and synthesize information from past documents.

WHO PAYS?

The environmental program is in theory self-supporting by a tax on projects that formerly were damaging to the environment. Only "environmentally significant" projects are to be analyzed; the costs are paid by the developer, and passed on to purchasers of the finished projects. As fewer damaging projects come forward, there will presumably be less cost. Meanwhile, the cost to the ultimate purchaser may be a reasonably good bargain. The cost is absorbed into total project cost; it may thus appear as a small increment in bonded indebtedness for a community project, or be amortized with the mortgage for a householder. In the latter case, if the incremental cost is $100 for a $40,000 home, it will increase the house payment by about one dollar above the base level cost of approximately $400 per month. If the home is better located on its site because of environmental analysis, if traffic circulation is improved, scenic values are preserved, noise is buffered, or any number of other benefits are derived, the cost may be well justified in proportion to the total monthly cost. The cost may even be repaid in cash, if ten miles driving is saved during the month because of a natural amenity near at hand, for example, or if heating and cooling costs are lowered even slightly through better orientation of the house.

STATEWIDE COSTS, INDIRECT BENEFITS

The above considerations tend to suggest together that the costs of the EIR program in the State, while substantial, may be reasonable costs, and they are being paid for by a reasonably painless tax. Much of the present program is likely to dissolve in the natural course of events as information and experience accumulate. Much of the cost until now has gone for training and "higher education," carried out in the halls of local government bureaucracies. If short-term costs have been incurred to support cross-disciplinary training of a professional cadre that now understands both government and environment, that may be accountable as a reasonable public investment, since there was apparently a public demand and need for that kind of specialist.

If the San Diego costs are representative of the State, statewide costs of the EIR program have fallen somewhere in the range of $15 million to $30 million per year. This compares reasonably to a CEQ estimate for the Federal EIS program: "costs may run as high as $65 million a year when NEPA is fully underway. However, much larger amounts can be wasted on any one ill-advised Federal project..."[85]

Setting aside any major "one-shot" savings that may have occurred due to CEQA, and setting aside the direct benefits to individual projects, the remaining indirect benefits of CEQA and the EIR process may be considered to fall in three major categories: (1) public and professional education; (2) governmental reform and institutional development; and (3) improvement in the practice of project design. Each of these categories represents a substantial benefit to the State; all three are transient (and probably irreversible) phenomena; all three are difficult or impossible to evaluate in monetary terms. Many hundreds of experienced specialists are now engaged in EIR practice in California; those who have been intimately involved in analyzing issues and environmental problems of local government for short periods number in the thousands because of high rate of turnover in the early phases of the EIR program. The City of San Diego is now in its third generation of analysts. The original group of twelve noted in Section IV returned to their departments in the City government. The second generation followed them, with many becoming environmental specialists in other City departments after a year or so of training in the Environmental Quality Department.[86] If the Statewide environmental analysis system were now disbanded, many localities would keep their local EIR implementing ordinances in force; in others, the staff would disperse to private industry, to other types of governmental jobs, and to other public institutions and activist organizations.

If the EIR system is kept as a formal State requirement, on the other hand, it will undoubtedly continue to change in form and content. The new cadre of environmental policy professionals will continue to change jobs, and to change the roles of their current positions. An informal network of like-minded professionals in this field will continue to evolve, encompassing individuals in government and in private consulting practice. For those specifically involved in the EIR process, the network is being formalized to a degree through the formation of an "Association of Environmental Professionals," whose principal purposes are to improve the practice internally, and to monitor or advocate changes in legislation and other external conditions that affect it. The AEP proposed Code of Professional Ethics is reproduced in Appendix D.

Perhaps more important than the structure of the EIR network itself is the role it plays as a bridging mechanism to non-governmental institutions, particularly to the network of citizens groups and public interest organizations noted in Section V.

It would not be possible to place a value on either the "public" network or the "public interest" network; both were unplanned in the legislation; both are to a significant degree byproducts of the legislation. They are accomplished facts. Having specialized knowledge of the environment and the ways of government, these two complementary networks would now--in the absence of CEQA--very likely proceed to implement some of the other underutilized environmental laws mentioned in Section V.

Other States and individual local governments contemplating the development of environmental management programs at the local level should take into account the value and the drawbacks of indirect effects of the EIR upon government process and organization, and upon education. The present report especially recommends that notice be taken of communication benefits, together with the development of balancing institutional structures; these are key benefits in California, filling roles that were substantially lacking before the EIR program was implemented. Other States may have other needs and interests; "formula" solutions are not likely to be valid elsewhere any more than they appear to be in local government in California.

RELATIONSHIP TO PLANNING

A major variable at the present time which promises to change significantly in coming years within the State as well as among the States is the role of local planning and of State planning. Because of the close relationship between the purpose of the EIR and the purpose of planning, and because of the growing intimacy between the two programs in many localities, the future of the EIR is closely linked to changes in planning.

THE STATUS OF LOCAL PLANNING

An editorial in the January 1972 issue of the Journal of the American Institute of Planners made an appeal for open debate on the future "shape and form" of planning. The statement was noteworthy in showing that professional planners have become somewhat ambivalent about the viability of traditional "end-state" comprehensive plans. Even for a limited local jurisdiction, the complexities are so great as to make adequate predictions unreasonably difficult. There is a felt need in the profession for some better means of addressing long range considerations in the planning process:

> ...The tidy good logic of being 'comprehensive' and 'long range' seems to be only a nostalgic notion — honored today primarily in the hollow bureaucratese of federal regulations.
>
> At the beginning of 1972 the planning profession is in disarray. Yesterday's themes were consensus, comprehensiveness, rationality, order; today the dominant themses are diversity, conflict, division and tension -- reflecting many of the rifts in the larger society. Planning's pluralism is the nation's pluralism.
>
> This is not a situation of despair; a time of diversity, stress, and conflict can also be one of great promise. Now it is much easier to see the plurality of values which has always existed but which the urban planner formerly hid from his community (and from himself) by means of a sanitized, orderly land use map and a 'philosopher king' self-image... As a result planning is emerging as more honest and less paternal; more open and substantially less naive; more varied while also more relevant...
>
> Similarly, the urbanization process has proven more difficult to understand than any mathematical model-builder ever dreamed. Having leaned heavily on the economist as the source of both understanding and methodological inspiration, we are beginning to understand that all approaches to the study of man and

> society are essential to our planning tasks. [emphasis added].[87]

The EIR program under CEQA came forward at that time and into that context of thinking. It responds as follows:

- The EIR system carries planning further in the direction of dealing with pluralism, diversity, and conflict; it very clearly contributes strongly to an openness of process; it is pragmatic in focussing on manageable, more nearly understandable problems instead of mind-boggling total systems. It introduces a broad array of new professionals and academic specialists into planning.

- It serves as an educational medium for professionals, developers, policymakers, and citizens.

- It helps build a political constituency that can advocate and support broad-based, farsighted policies and decisions.

In California local government, the EIR program has introduced an operational, case-by-case approach to land use control. It may be inadequate to the total systemic needs of planning; it may be a temporary palliative while a better system is worked out. But in many localities, it is effective as a technical control mechanism. Perhaps even more important, as the present report stresses, the EIR system has in some hands been an effective agent in helping to manage rapid change in local land use control.

DIVERSITY

A chief reason for the present diversity among EIR processes in the State is that Planning Directors have divergent views of their own roles, and the EIR impacts those roles in different ways. Some Directors may have spent their entire careers as zoning administrators, perhaps filing adverse comments on proposals only on rare occasions. The EIR threatens that kind of role in its purposeful intent to find and display adverse information. The individual required to present such comments to his Planning Commission cannot be expected readily to change his habits overnight.

Other Planning Directors may face an entirely different situation, previously exerting great efforts to teach and persuade their Commissions and elected board of the merits and demerits of projects, based on planning principles and economic arguments. They may have found it hard to justify strong recommendations before; the level of "reality" of the arguments available was not high enough for the average elected official. CEQA, by contrast, emphasizes a physical reality that is readily understandable. And in response to the request of boards for counterarguments, this type of planner is provided a desirable opening for strong economic and social arguments, on an equal footing with the environmental points. The entire level of discussion of planning thus may be elevated as a side-benefit of the process. This is by no means a uniform situation; change takes time, and it may require extensive work in a wide variety of jurisdictions and situations before planning practice is made significantly more uniform. But the present change seems to be moving in a convergent direction, by addressing a uniform set of policy statements regarding the desired quality of life and of the physical environment.[88]

With regard to the planner's role in influencing projects through the EIR, two quotes are of interest. Ned Rogoway, the Planning Director-Environmental Coordinator of San Luis Obispo County, notes that his planning agency's ability to advise developers about design and location has definitely improved since AB 889:

> This is where I think the most benefit has come. Of course, this is what it is all about! If used properly the EIR can be of great benefit for good design justification... Mitigation measures give broader perspective to set project conditions. Alternatives give leverage to change design.

Robert L. Wall, Planning Director of Tulare County, similarly notes:

> Better designs and mitigation factors have arrived.

He observes that developers definitely are preparing better site utilization plans as a result of the environmental analysis requirements, "and some are not proceeding to develop where fragile systems will be destroyed."[89]

DATA BASE

A long term objective, widely felt in California today, is the need to integrate planning and environmental analysis on a technical level. It is not yet clear what form that integration should take, nor whether it should be uniform from one jurisdiction to another. In integrating the two, changes may be needed in the traditional system of planning, zoning, and project review. This is made difficult in some regards by explicit statutory requirements of the planning process. The obligation to establish a "planning commission," for example (Sec. 65100, Gov. Code), gives statutory standing to a body that might otherwise in some localities be abolished or changed to suit new conditions.

Many localities are at present particularly concerned about ways of relating their EIR needs to their requirement under State law of preparing and maintaining nine different elements of their general plans. Several of the elements deal specifically with physical environment factors. A logical conjunction would involve aggregating EIR information by some means into the plan elements, using the plan elements themselves in turn as a "master" data base for further EIR analyses.

Planning processes and the handling of planning data vary widely among local jurisdictions, however. No single formula for doing this is likely to work everywhere. A wide range of experiments are now proceeding in trying to converge the two informational programs.

For any given jurisdiction, the total amount of physical environment information available at present is probably not excessive; the problem is a multiplicity of data formats, including various approaches to EIR data management, and various approaches to compilation of data for General Plan elements. There is now no apparently superior format for a unified system, locally or statewide; nor would it likely be cost-effective to change all local data to some arbitrary statewide standard. If further accumulation of data is to be encouraged it may be advantageous for the State to offer a program of incentives and assistance that would encourage local government to proceed with integration of planning and the EIR. Perhaps this could be accompanied by disincentives to work against the further production or recycling of information for purely formal reasons.

STATE PLANNING

Further development of the planning processes, and thus of the EIR, may be dependent in part upon changes in State planning. There are a variety of approaches to Statewide change now, and they would offer very different roles to the local level--ranging from local dominance of the system to local subservience under State-level or areawide planning programs. The State Coastal Plan, which is now undergoing active public discussion, will provide a key point of focus for further State planning purposes. It will be submitted to the Legislature at the end of 1975, and is to be considered for adoption by the next Legislature beginning in January 1976. Included in the Plan will be a proposed institutional framework for implementing the Plan. Discussion of the Plan and framework will most likely run parallel with and integrate into discussion of the future of local planning and the EIR process.

The structure and content of the proposed State Coastal Plan document is important to a discussion of the future of the EIR. The Plan contains 183 statements of proposed State policy, many of which are highly detailed. Statements, related findings, and regional amplifications occupy 261 pages of the 385 page draft document. The remainder is introductory and descriptive, including discussions of implementation and of a set of 24 appended maps.

Many of the policies are not specific to the coast, including energy conservation measures and water resource management; these have now become necessary considerations in any comprehensive plan. Aesthetic quality, recreation, transportation, and development control are all subjects of major emphasis in the plan, as they might be in a general State Plan. The document reads somewhat like a catalog of policies that coastal communities or even inland communities might consider, if they wished to develop a policy-oriented general plan. With the addition of specific discussion of particular areas of a community, however, a resulting policy manual for local planning and project review could become very voluminous. The role of impact analysis in the presence of such a policy manual could include the detailed consideration of project compatibility with policy statements, and the analysis of trade offs involved in overriding various specific policies.

CONSIDERATIONS FOR OTHER STATES

Part of the future of California's local EIR requirement is its potential application elsewhere. States considering such an environmental impact requirement are urged to study California's experience, and particularly to note the role the EIR has had in aiding the adaptation of local processes to rapid changes in the external conditions under which decisions are made. The EIR focuses on today's decisions, discussing their costs and future ramifications. Changes in related law, and dramatic effects such as the recent increases in costs of energy and other resources may be immediately taken into account in local decisions through the EIR. By contrast, changes in overall general plans may be slow and politically complex. Such plans therefore tend to reflect prior conditions and values rather than immediate needs and interests of decisionmakers.

States (and foreign nations) that lack well-developed local planning may find the EIR to be a reasonable substitute, or a useful interim measure while systems for planning are under development--at any scale of government. The present report would caution, however, that simple formulas for local environmental management may be unrealistic, particularly in states that have widely variable conditions of local management, economy, degree of urbanization, and attitudes toward development.

RECOMMENDED: A "DARWINIAN" APPROACH TO STATE LAND USE CONTROL

It is not clear at present what form planning and decisionmaking processes will eventually take in California as a result of changes now underway. No particular management model appears to be superior. What works in one locality may be inadequate somewhere else. And upon a change of local administration or of elected officials, processes may appropriately change to fit a new set of interests and modes of participation.

The general ferment of organizational change in California local government may be compared to the apparently chaotic structure of a rapidly-evolving "ecological" system. Each locality is undergoing locally-adaptive evolution. "Mutant species" of management systems are developing, some of which may be of broader applicability. Cross-fertilization of these strains may at some point be appropriate for purposes of selecting out and cultivating those traits that appear to be most generally useful. Until now, the evolution has been natural, or "Darwinian," with the "fittest species" of management system surviving and spreading by local selection, with little or no imposed structure. In San Diego County, for example, conditions have changed sufficiently to stimulate major innovative change away from the more-or-less "standard" model of organization that the County had helped to found in 1971-1973. Meanwhile, the Cities of Irvine and Del Mar have both converged from different directions toward a Sausalito-type model.

Further change may be expectable in all these examples, though they may tend to stabilize with time. At present, it would be difficult for the State to confidently impose specific models of local practice; it appears unlikely that one standard system could serve usefully in all the many different conditions and stages of evolution now present in the State. Perhaps more important, the future of the EIR program is intimately tied to the future of local planning, and the planning system is now unsettled.

There is much discussion in the State of how to develop effective Statewide land use controls. But a major problem in inventing appropriate controls is that the State does not have a policy or program for the control and distribution of growth and development; and that is a fundamental issue in reform of the planning system. The problem is not the total amount of available control for land use in the State, so much as it is a question of the distribution of existing controls. Some places are locally controlled to the extent there is no development; other localities go through the motions of planning and regulation, but will bend the rules to encourage development.

If the State's policy is to encourage development where it is wanted locally, and to discourage it where it is not wanted, then the present system of controls may be adequate to the purpose (it may in fact be better than a system designed from scratch for the purpose). On the other hand, if the State's policy is to equalize development, forcing resistant localities to accept their "fair share" of new construction and new residents, then a system to implement that type of policy would be due for consideration. Or means may be sought of adapting the present system for that purpose.

In view of the numerous laws and requirements that local government must now try to satisfy (as noted in Section V), and in view of a lack of strong policy direction for further imposition of structural changes, it may be advantageous to local practice for the State to allow and even encourage local diversity in management approaches. That is, a continuation of the present "Darwinian" strategy of management may be appropriate.

The State may be able to encourage usefully adaptive changes. In order to do so, it may be advantageous for the State Administration to try to relate to local agencies (and to non-governmental organizations) on a service basis wherever possible, reserving its role as policeman for resistant or exceptional cases. Service can take the form of responding to inquiries, conducting workshops, publishing illustrative information about existing alternative approaches (to the integration of the EIR into planning, for example), and actively seeking out instances of failure of the EIR process and assisting those localities to find some means of accommodating CEQA into their current practices. While pursuing such activities the Administration can become more authoritative on current problems of local administrative practice in local environmental planning and regulation. It will thus be better able to address long range administrative problems in its recommendations for further legislation. Such an awareness was significantly constrained in the previous State Administration because virtually no staff personnel were directly allocated to the management and servicing of the local EIR process.

SECTION IX

THE ROLE OF EPA IN LOCAL PROJECTS

An extensive EPA-sponsored survey of local land use controls concludes that

> Local government is currently the weak link in the intergovernmental environmental policy framework mainly because it lacks technical capacity and is underutilized by higher levels of government. However, ... local governments do have a strong sense of responsibility and would respond positively to further encouragement of greater participation in environmental planning.[90]

Preceding discussion in the present report indicates that CEQA has significantly augmented the technical capacity of many local government agencies in California. Agencies are empowered by CEQA to hire virtually whatever services they feel are necessary to analyse and review development proposals, passing the costs along to the applicant. A number of local agencies have responded very positively to this encouragement, and have taken steps to develop their own approaches to environmental planning.

EPA and other Federal and State agencies are now provided the opportunity in California of working with more sophisticated local partners; it remains to be seen whether this new resource in local government will be fully utilized by the central government organizations.

In examining California's experience with CEQA, it is of interest to consider how new kinds of Federal relationships with the local level of government may be developed. A related question to ask is: What lessons can be learned from the overall management model that has been followed in implementing CEQA?

The State's management approach to CEQA has been thoroughly decentralized, with little administrative direction from the State. Guidance on interpretation of the Act has been provided to a significant degree by the courts. Litigation is ongoing; much of the emphasis of active litigants is upon precedent-setting cases. As a consequence, many non-lawyers engaged in environmental planning in California try to keep informed about developments in case law. Key cases such as Bozung, and Burger v. Mendocino County are followed particularly closely (as was the watershed litigation in Friends of Mammoth) because of their significance in local practice. New developments in case law form an important basis for periodic updating of the State's administrative guidelines. Meanwhile, local agencies, consultants, and developers utilize their own interpretations of the law, the guidelines, and the cases in the ongoing process of evolving local management models. To a significant extent, impact analyses are written and interpreted with an eye to how they would be viewed by the courts.

This is a healthy situation in some regards. Localities can go as far as they wish in trying to follow the intent of the law. Knowledge of how the legal system operates is widespread (and becoming more widespread in California); the system may be assumed to be unbiased and to be concerned primarily with keeping the law--by contrast with the observation of Thomas Lowi that administrative agencies have a natural tendency to experience a secular decline in their concern for the law itself.

As a further point, it can be argued that "ecological diversity" of management structures in local government is itself healthy, providing a dynamics of change that can allow continuous experimentation with better ways of carrying out local management tasks. This point is perhaps not apparent in considering single categories of functional tasks such as water pollution or air pollution control; it is easier to see in the context of the total aggregation of State and Federal programs that are imposed on local government. The possible ways of interrelating these programs are infinite and generally are unspecified. They consequently should not be expected to be handled uniformly in different jurisdictions.

CONTRAST: EPA

The Federal management approach exhibited in EPA's programs is, by contrast with CEQA, centralized and highly structured. Guidance for local practice tends to be more strictly based on administrative interpretations of the law by the Federal and State agencies.

From the point of view of a central administrative agency, it is most convenient and straightforward to try to handle functional programs in as uniform a manner as possible. A difficult task in general for such agencies is to write a set of administrative guidelines to make that possible. Guidelines will of necessity tend to be addressed to the "average" situation or jurisdiction, and hence may tend to neglect "best" as well as "worst" cases, and overlook special circumstances.

A specific example, EPA's Clean Water Grants program under Section 201 of Public Law 92-500 (the 1972 Federal Water Pollution Control Act Amendments), will be singled out for discussion and comparison with the CEQA experience.

Section 201 is a principal program of EPA, making the Agency responsible for disbursement of billions of dollars in construction grants for sewage treatment facilities. Management of the program is significantly centralized in the agency itself, and in the State agencies that serve as conduits of the funds and monitors and administrators of the program within each State. In California, the responsible agency is the State Water Resources Control Board (SWRCB), backed up by nine Regional Water Quality Control Boards (RWQCBs). These Boards have existed under progressively increasing authority since their establishment in the late 1940s.

Administrative interpretation of Section 201 is set down in a set of binding administrative regulations, plus a highly detailed guidance manual[91]--which doesn't have the force of law, but which is a major interpretative medium for administration by the state agencies. In California, the State Board publishes its own version of the manual,[92] which is then a key document for local agencies in planning and implementing individual projects.

The documentation step of essential importance to the local agency under Section 201 is the preparation of a "facilities plan report," which is in many ways analogous to an EIR. Instructions are given in the Guidance on procedures to be followed in preparation of a set of alternative plans; these are to be analyzed and reviewed through a series of program steps leading to a final selection of a specific "facilities plan." A Federal EIS is also prepared, pursuant to similar procedures outlined in a separate manual.[93] The number of facilities plans and impact statements prepared nationwide is now increasing rapidly, and EPA is in the process of delegating EIS preparation increasingly to the local applicant, consolidating the preparation process into the planning process rather than doing it after-the-fact by a separate procedure. It thus may be anticipated that facilities planning activities and documentation will increasingly move in the direction of the processes and documents required by impact analysis itself.[94]

For purposes of present discussion, comparison will be drawn between the EIR procedures under CEQA and the facilities plan procedures under Section 201.

Two differences of major significance exist between the management program prescribed for facilities planning and that followed for the California EIR process:

(1) The management structure for facilities planning is centralized and hierarchical; local applicants and their engineering consultants respond primarily in a "vertical" sense to administrative staff of the State Board and the EPA Regional Office. Personnel involved at each level tend to be specialists. In the absence of the EIS requirement, virtually all staff involved may be civil or sanitary engineers. This contrasts sharply with the decentralized, non-hierarchical arrangement of the EIR process, in which there is little communication with State and Federal government. Information flow in the EIR process, and review of the process and documentation is predominantly "horizontal," involving a wide variety of agencies and professional specialists at the local level, as well as an active participatory role on the part of the public and its organizations.

(2) CEQA and its state administrative program prescribe little specific information content for EIRs beyond the seven basic topical items (adverse impacts, mitigation measures, etc.) plus the requirements imposed by relevant case law. The facilities plan guidance, by contrast, provides a highly detailed report outline. For "complex cases" (which category includes virtually all significant or controversial situations), the step-by-step outline occupies 20 pages in the October 1974 edition of the EPA "Guidance for Facilities Planning."[95] The State version is

even more elaborate. This level of detail reinforces the impression of local agency staff that a key concern in planning must be to satisfy the detailed demands of project monitors at the State Board and the EPA Regional Office. Applicants may feel constrained to follow a prescribed pattern of thought and activity in order to fulfill the anticipated requirements. Actual needs of the local community may take a back seat; innovative approaches to satisfying the needs may be easily overlooked in this situation, contrary to the purpose and intent of the law, as stated in Section 201 (see Appendix F).

EXAMPLE: THE METRO SEWER PLAN

The City of San Diego Department of Water Utilities is currently conducting a Section 201 facilities planning study in its role as manager of the San Diego Metropolitan Sewer System. The System was founded as a result of a massive, year-long consultant study conducted in 1951-52 by the County government at the request of the (then-entitled) Regional Water Pollution Control Board. The study followed reasonably closely the procedures and documentation required of a present-day Section 201 Facilities Plan. It analysed the natural environment, and the social and economic conditions, and it made population projections (which incidentally were very accurate); several alternatives were considered and analysed, including a wastewater reclamation option. A bound volume of 515 pages resulted,[96] which has remained the "bible" of sewer planning in the County since its publication.

The preferred alternative plan in the study was eventually constructed (though nearly a decade later because of the failure of voter approval of bonds). Other studies have been carried out over the years to update and refine the original "facilities plan." Extensive supplementary studies are available regarding the natural environment, offshore and onshore water quality, and planning alternatives for land use. Furthermore, the City of San Diego enjoys a reputation of being a progressive leader in the fields of water and sewer planning and management.

Nevertheless, despite the favorable circumstances and the prior work, and despite legal authority to avoid duplication, the engineering consultant on the plan felt "overburdened by EPA's requirements," and exerted very great staff efforts to produce a draft facilities plan report that deals in detail with all the specified requirements in the Guidance. The final document will very probably exceed 2000 pages, of which approximately one-third will be the environmental impact statement.[97]

Costs of the planning study of $236,000 are enormous by EIR standards, though small compared to other 201 planning programs in the State. They are miniscule compared to the millions that may be spent for engineering costs on the final project, which will probably be close to 10% of the ultimate project cost of $80 million to $300 million. On several grounds it seems in this instance that the guidance given by the State and by EPA may have been overly restrictive, and that all parties concerned could have benefited from a freer rein that would have allowed the City and the consultant to determine the procedures to be followed and the documentation to be provided. That is, a prime opportunity may have been lost for an experiment in "self-regulation" of the type described in this report. Such experiments have begun to emerge in San Diego and in other California local governments in the field of environmental planning; they could be useful to EPA in developing further refinements in facilities planning, and in developing alternative processes.[98]

The overly restrictive situation described is not unusual, except that it occurred in such a well-tested local agency. An editorial in the April 1974 issue of Water and Wastes Engineering claims

> The nation's Clean Water Program has been and is being emasculated by an almost unbelievable proliferation of administrative red tape--a fantastic maze of baffling guidelines, burgeoning regulations, bewildering paperwork, and ever-changing directives have brought the program to a virtual halt.
>
> Draft after draft, pre-application conferences, final upon final administrative regulations, imperfect guidelines, overly-rigorous application of stringent requirements, cost benefit tests of EIS, super documentation; these are some of the ways engineers and wastewater officials are being sandbagged.[99]

In a similar vein, John D. Parkhurst, President of the Water Pollution Control Federation, has criticized the Grants Program, stating:

> One of the serious failures of the federal government has been its inability or unwillingness to recognize the many unique circumstances in each locality. Its continuing tendency to treat all circumstances alike has caused serious and difficult problems.
>
> It would probably be inappropriate to single out either Congress or EPA for the problems with PL 92-500. Although the goals and objectives seem to be more idealistic than practical, they certainly reflect a common desire for a better environment and the enhancement of water quality. The simple fact, however, is that in concentrating the responsibility for water pollution control at the highest level of government, Congress has assumed that state and local agencies are incapable of conducting this program without federal control. In so doing many otherwise avoidable problems have been created. Excessive paperwork is often cited; although the law specifically refers to its minimization, it has increased so drastically that as much as 50 percent of staff time at all levels may be required to process paper work.[100]

An essential point, however, is that EPA is not simply in the business of doling out money for sewer construction; it has a broad mandate to protect the environment, all of which may have bearing on planning for sewers and sewage treatment works. Criteria for plan selection and funding changed significantly in the passage of the 1972 Amendments to include a wide range of new considerations. The law itself is clear on its environmentally-oriented purposes, as is the choice of EPA as the grants administrator. Local agencies for their part, however, generally continue to pursue a policy of "business as usual" in sewage planning; and local governments are the applicants (i.e., the developers) in the Section 201 grants program.

Despite recent concerns with growth and urban sprawl, for example, engineers and local public officials continue to grossly oversize interceptor sewers. A recent CEQ study of 52 EPA-funded interceptor sewer projects states that, in general, half the land to be served by proposed sewers is vacant, and would be likely to remain vacant without the sewers. In effect, the Federal government is subsidizing "urban sprawl" through its sewer grants program.

Several case studies analysed by the report illustrate the political forces at work in local planning and development, showing how difficult it is for the present system, even with tight Federal control, to slow or stop the continuance of sprawl. Design periods for utilization of ultimate capacity are generally far longer than necessary, and the capacity assumed to be needed is excessive, the study concluded. Public participation and the consideration of environmental impact were both found to be commonly inadequate.[101]

A related problem of designing for excessive capacity (particularly in treatment plants), or of designing to excessive standards, is the resulting increased demand for pumps and other equipment at a time of equipment shortages. Pump manufacturers are now waiting up to 22 months for delivery of pump castings; other materials have even longer delivery times.[102]

Regarding public participation, an EPA-sponsored companion study to the present one, which analysed on a nationwide basis the role of the EIS in facilities planning, concluded that there is a characteristic attitude on the part of engineering staff that discourages a meaningful public role. EPA guidance requires that a hearing be held; but if public testimony is heard at all, it is likely to come too late in the decisionmaking process to be useful. The study found that

> In the absence of effective contravailing forces, environmental factors tend to weigh less heavily than technical and cost considerations in the evaluation of alternative waste treatment system approaches. One reason for the observed tendency to exclude the public from early decision making may be that it is considered more convenient to assess project alternatives on the basis of purely technological and economic factors without the complicating intrusion of "extraneous" environmental issues. In addition, it has been implied that citizen participation in the planning processes is discouraged because the public does not understand

> the engineering considerations involved; in reality, however, many public environmentalist groups include or retain individuals with high levels of technical expertise in the requisite disciplines.[103]

The same study concluded that state agencies, on a nationwide basis, are not particularly active in project review.

> The State water pollution control agency which is responsible for review of the grant application does not, in most instances, tend to be overly critical, nor does it wish to present obstacles to project approval and execution. (The agency would not have prioritized the project in the first place if it had not considered it necessary.) As a rule, the State restricts its participation in the grant application process to compliance with the formal requirements that it certify the priority of the project and confirm its compatibility with any existing regional waste-water management plans. For example, few State agencies reject an applicant's environmental assessment on the grounds of inadequacy or superficiality of treatment.[104]

Despite the State agencies' casual attitudes,

> many EPA officials feel that the States should perform a preliminary screening function in behalf of the Regional Offices (of EPA) both because the State agencies are more likely to be familiar with local conditions in project areas and because such screening would, to a degree, lessen the workload imposed on often overburdened regional personnel. At present, consideration is being given to the delegation of broader review responsibility to State agencies.[105]

DEMANDS UPON THE EPA

The task appears to be generally left to EPA at present to provide not only project review and monitoring, but also an oversight of the relationship of the project to other environmental program areas.

In view of the glut of new projects, the Agency appears to be suffering from "informational overload." It is selective in the projects it chooses to review thoroughly:

> EPA's decisions with respect to EIS preparation and issuance are as strongly influenced by the amount and intensity of public controversy associated with a proposed project as by its prospective environmental impact. This suggests that the scope and depth of environmental reviews performed by Regional Offices are more extensive in regard to projects

> known to be foci of public concern than might otherwise be the case. For example, a non-controversial project of low immediate environmental impact which could, nevertheless, be significant in terms of its implications for future growth with related secondary effects, might not be considered by the EPA Regional Office to warrant preparation of an EIS.[106]

The Agency's basic criterion for "significant impact" requiring preparation of an EIS is that total eligible costs of the project are $20 million or more.[107]

An important effect of the overload problem is that certain features of the policy and purpose declarations in the 1972 Amendments have tended to be submerged--in spite of the very large amounts of money available that presumably would permit those factors to be considered if the managerial program were capable of handling them. Section 201 itself places emphasis on consideration of diversified uses of treated wastewater, including specific mention of recycling and reclamation for agriculture and aquaculture; integration with facilities for treatment of solid waste and thermal effluents; consideration of related "open space" and recreational opportunities; and accommodation of future technology that would provide for recycling and reclamation. (Section 201 is reproduced in Appendix F.) Although these considerations are of concern to many citizens, they tend to get short shift in the rush to get projects underway. Consideration of such diversified opportunities would cost far more staff time at all levels than a more straightforward emphasis on concentrated, large scale secondary treatment facilities. At the local level, agency staff and their consulting engineers are not inclined to entertain unconventional proposals because they are virtually certain to be more complex and probably more controversial than a straightforward secondary treatment plant and related interceptor sewer system. Furthermore, the increased amount of work involved in planning and in design engineering is probably not compensated by a similar increase in available funds. Grant-eligible costs may, in fact, be decreased through some of these schemes, and there is little incentive for cost savings when EPA is providing 75% of the funding and the State Board is funding half the remainder. From a practical political point of view, the local contribution is a small subsidy that can bring in a large amount of "new" construction funds, together with their multiplier effect on the local economy.

There is essentially no constituency organized to pursue the "unconventional" purposes of Section 201, in the absence of serious pressure from EPA, and in the absence of a competent public demanding that consideration be given to these factors. Lacking that kind of support, the Agency has substantially retreated from the 1985 goal of "no discharge" in favor of the 1983 goal of "fishable, swimable" water. The Agency's Water Quality Strategy Paper contains the following statement:

> The Act also contains the goal of no discharge of pollutants for 1985. This goal cannot be implemented under the authority of the existing Act. Furthermore,

> EPA foresees that universal achievement of "no discharge" by 1985 may not be either feasible or environmentally desirable. Indeed, for the 1983 ambient water quality goal as well, the present interpretation of the legislative caveat "where attainable" recognizes that naturally occurring conditions, or uncontrollable non-point source pollution, could result in a failure to meet the 1983 goal everywhere. However it is not intended that point source pollution, whether individual or aggregate, be the prevailing reason for its non-achievement. [Emphasis added][108]

There are mitigating reasons for abandoning the "no discharge" goal for the nation as a whole; however, some individual municipalities may be capable of achieving that goal on a local basis if simply permitted to do so by the Agency. This is particularly true if the diversity of points emphasized in Section 201 (particularly recycling and reclamation) are required (or at least encouraged) to be taken more seriously in the next step of construction.

The County of Sonoma, at the head of San Francisco Bay, is in the process of developing a plan (with EPA support) to preserve green space from urban sprawl, while also keeping alive a local dairy industry by spreading reclaimed water on pasture lands. The plan is to apply a portion of ongoing sewer service fees to the purchase of the open space. Over the long term, this plan essentially will remove Sonoma County from the metropolitan region, from the standpoint of eventual sewage discharge. This option may have been forestalled, however, if a plan had been adopted that exported untreated sewage out of the area to a regional treatment system, for example.[109]

A similar choice is now available in San Diego. If the present system is simply expanded and upgraded to secondary treatment, the "sunk costs" in the facility will probably stop major future investment in any large-scale reclamation scheme, particularly if grant funds are no longer available. A duplicate set of pipes to carry treated sewage back onto the land is virtually out of the question because of initial capital costs as well as ongoing operating costs for pumping and maintenance. The present planning program has not found an economic technology that would allow major reclamation at the outset of a long term plan, and so present thinking is tending toward a compromise of one or two large scale plants within reasonable pumping distance of future reclamation areas.

In both of the above examples, consideration of reclamation was a matter of local initiative and public support--resisted initially by the State and EPA. In Sonoma County, a key individual in initiating the plan was County Supervisor Bill Kortum. In San Diego, impetus came from the City Water Utilities Director, Richard King, drawing further interest from the public committee and the consulting engineering staff.

A third example, which did not succeed in becoming an official plan, was a proposal by the City of Morro Bay for a reclamation facility, on the Bay. In this instance there was considerable public support and backing of local officials. However, according to City Manager Murray Warden, the plan was resisted too strongly by State and Federal agencies and was abandoned.[110]

PL 92-500 TODAY AND CEQA BEFORE MAMMOTH: AN ANALOGY

At the present time in California, the status of Public Law 92-500 as an object of public interest and activity is somewhat analogous to the status of CEQA prior to the Friends of Mammoth decision. P.L. 92-500 represents a distinct policy departure from prior related law, but it is being implemented within the context of the pre-existing system. Its regulatory requirements are being followed in a pro forma manner; its planning implications are significantly ignored or thwarted. If the full intent of the law were to be implemented, a substantial departure from "business as usual" would be required. There has been little reason for local government administrators or politicians to risk undertaking such change on their own and, with a few noteworthy exceptions, there has been little departure from the "average" approach to the law. Public groups are generally disinterested; the responsible State and Federal agencies do not have adequate authority or staff to turn around the entire system into new modes of operation.

Throughout CEQA's first two years the chief advocate of a reversal in that Act's interpretation was a State agency, the Attorney General's Office.[111] In a similar vein, there are now not one but three State agencies that are undertaking non-traditional views of the long range management of water resources. They may have a significant influence on the future direction of the Grants Program, and more generally on the relationship of wastewater management to land use control and planning.

(1) The State Coastal Zone Commission has incorporated in its Draft Coastal Plan a policy[112] that would stress (and give funding priority to) projects incorporating reclamation of waste water in preference to coastal discharge of treated sewage. This policy already has influenced some facilities plans, including San Diego's. Two other policies relate water management to planning and comprehensive watershed management, stressing conservation and reclamation of water together with recharge of groundwaters, and stating that the State Department of Water Resources should be funded and empowered to pursue and proclaim the benefits of reclaimed water.

(2) The Department of Water Resources, under the leadership of its new Director, Ronald Robie, has in part reversed its traditional course as a developer and purveyor of aqueduct water, and has declared its intention to revise the State Water Plan during the next two years to take account of opportunities to "stretch the water budget" through conservation and reclamation.[114]

(3) The State Water Resources Control Board recently signaled an increased interest in water reclamation at a symposium it sponsored in April 1975 in conjunction with University of California Extension.

In addition to these sources, an increased public level of interest in reclamation and conservation of water is emerging as a consequence of increasing energy costs plus a concern for the future of food production in the State. This interest is likely to be stimulated as the above three agencies become more active in the subject.

SECTION 208

A significant new program that will force increasing confrontation between land use management and water management considerations is the development of Areawide Planning programs under Section 208 of P.L. 92-500. The intent of this section is to develop large scale, long range plans and to address problems of indirect sources of water pollution, particularly runoff. This intention implies that increasing use may be made of water quality criteria as tools for land use control; conversely, it implies that land use factors will increasingly shape decisions on wastewater treatment. The State Board is now in the process of identifying Section 208 planning areas; unexpectedly, the Board has found (in the Spring of 1975) considerable resistance being expressed by local governments, who generally appear to view Section 208 as another Federal effort to undercut their land use control authority.[115]

As with the grants program, the 208 planning program is being set up along traditional lines--in this case the Board's general idea was to place the 208 planning grants in the established regional planning agencies. However, these agencies have traditionally been viewed with some suspicion by local government; local governments appear to be resisting an implied increase in the regional agencies' decisionmaking and operating authority.

REGION IX INITIATION

One apparent need for change in EPA's management strategies is to find better ways of stimulating local government to take a more active role themselves in trying to satisfy the intent of P.L. 92-500 and other environmental laws, rather than passing the buck to the State and Federal government. This need is noted in the earlier comment of David Morell. It is also recognized and is being acted upon by the Administrator of EPA Region IX (San Francisco) and his staff.[116]

In collaboration with the League of California cities, Region IX staff is evolving a strategy that would tie funding and project authorizations, for any given community, to decisionmaking criteria that would include consideration of planning requirements and regulatory powers (including those of State and Federal agencies). The general intent of the delegation would be somewhat analogous to the theory behind the Housing and Community Development Act of 1974:[117] Put the burden of proof on the local agency to show that the intent of the law is satisfied. Planners of the present strategy go a step further. In their view, regulatory authorities such as the State Air Resources Board could be utilized by the local agency as part of its own police powers. They could expect the Board to stand behind local zoning and permit decisions, for example. The local governments, for their part, would be obliged to include State air quality criteria, and consideration of State air quality plans, in their own planning and decisionmaking. Thus with regard to highways and mass transit, the objective of the Region IX strategy would be to meet transportation needs and conform to the law. This will require the collaboration of all levels of government. The same holds true for sewers, and for community development.

EPA staff hopes that these purposes can be achieved largely through stimulating and encouraging local governments themselves to undertake analysis of the legislative requirement, and to incorporate laws such as the Clean Air Act into their normal operations. Self-analysis of environmental legislation by local communities will have an important side benefit for EPA's purposes, in the view of Region IX staff: It can overcome some of the secondary effects of projects that are otherwise unknown to local agencies prior to preparation of an impact analysis. Thus the number of statements under NEPA may be reduced, and the statements themselves may become focused more directly on the factual matters of the situation, rather than the secondary effects.

A COMPARISON: SANTA CLARA COUNTY

A strategy similar to the one evolving in the EPA Region IX office is now being implemented successfully on a smaller scale in Santa Clara County (as described earlier). What the Regional Office seems to aspire to do is to place itself in a type of managerial relationship with smaller units such as is now occupied by Richard Hall and his staff. The County's operational responsibilities for actually executing and processing impact analyses have been drastically diminished by inducing applicants themselves to work within the same policy framework in preparing plans in which the County operates in reviewing them. The EIR per se is, as a result, becoming a redundant part of normal operations, and in essence reserved for use in exceptional cases, or as an appeals process for the applicant or his opposition.

The County's delegation of analysis activities is twofold: First, to cities for most public services; as in the case of service extension for San Jose's proposed industrial parks, self-analysis far in advance of plan execution can show unexpected results that are reflected in a change of the entire planning process. The role of the County is primarily that of providing a service to each City's EIR program, helping to develop and maintain data files, assisting with communication and coordination, and so forth.

Second, delegation of the EIR in effect goes to the construction industry and the financial community for private projects. Applicants undertake primary responsibility for site analysis, avoiding consideration of potentially damaging projects, and designing in mitigating measures prior to the formal involvement of the government. County staff meanwhile is available in a service capacity to help with design and analysis, to give advice and data about important site characteristics, and to assist in the identification of alternatives and mitigation measures.

All this is done informally, and with far less staff proportionally than San Diego County, for example, which offers some of the same informal service, but which also has found it necessary to perform the "raindance" of formal analysis on projects where it seemed unnecessary to staff and decisionmakers to do so.

DELEGATION: POLITICAL ROLE OF THE PUBLIC

The essence of the contemplated EPA Region IX League of Cities strategy is delegation: Let the cities take over the burdensome tasks of policy and program coordination. This implies a willingness and interest on the part of the local governments, however; earlier discussion in the present report would suggest that performance of the indicated type of role may depend on local political support. The more successful instances of aggressive and entrepreneurial use of CEQA seem to occur in localities where there is active political support and interest, making it advantageous to the local manager to venture innovations.

Delegation alone is thus not enough. There needs to be a local basis of political motivation to take the legislative intent seriously. There is considerable emphasis in the EPA Sewer Grants Program, for example, on delegation and on local responsibility.[118] The actual preparation of plans and documents clearly is in the hands of local authorities in EPA's present approach to the grants program. However, what this has tended to mean is, in Professor Beer's words, "that the making of decisions is a task pushed down, and implicitly condemned to a stereotyped outcome."[119]

Beer provides a broader basis of theory for guidance on how such delegation can successfully occur. To begin with, it is necessary that participants view the structure not as a system of hierarchical authority, but as a "metasystem" where (as observed in Santa Clara County) the traditional managerial role is replaced by a service function:

> In fact, the corporation and the state, like the father, should be cybernetically regarded as servants of the subsidiary companies, the departments and the children. The realities of life are found at the operational level. If my brain sets out to kill my body by holding its breath for good, the autonomic nervous system will soon thwart that merry design. Equally the children and the subsidiary organizations will thwart authoritarian behaviour at exactly the point when the metasystem is apparently acting from authority rather than from superior information and higher-order logic. This revolt is easily brought about, because the metasystem does not deploy sufficient variety to hold the lower systems down. If it wishes to turn itself

> into a genuine supra-authority rather than a metasystem, that is easily done as well - by destroying variety in the subservient system. In this way my brain can kill my body by throwing it over a cliff, fathers and company presidents may become despotic, and the state may become totalitarian.[120]

To make the desired structure responsive to complex demands, the second urgent need is a set of "metacontrols." That is, a monitoring and communication medium whose role it is to see that planning is homologous with organization, and not simply fragmented throughout the structure.

Beer deduces that the sought-after metasystem may be characterized in theory as a disseminated network of fast-acting real-time regulators, in which action derives from information, and not from authority. He states that competent information is free to act, and implies that the problem of the system of metacontrols is to find out how to provide competent information on an ongoing basis to the disseminated points of decision. One possible way to do this, he suggests, is through a system of linked computers with disseminated terminals.

An alternative, suggested by the operation of CEQA in the State of California, is that monitoring and communication (i.e., metacontrol) be provided by the public itself, backed up by the coordinative network represented by the State's system of public interest organizations and citizens' groups. It has been noted that Don Benninghoven, addressing the Planning and Conservation League, stated "the public has really taken control of the planning;" the trouble is, the governmental authorities "don't know how to give you the information in a way in which you can make intelligent decisions. That information is real power. The power is understanding."[121]

Rather than a technical elite providing input to decisionmakers through a traditional planning system, or through a futuristic computer system, the body politic itself in California has begun to evolve into a system of metacontrols. Environmental impact reports have provided a system (not always adequate or comprehensible) of "real-time data" at the point of decision, from which the information content has been distilled through an elaborate management process involving many parties. This can involve a solicitation of information from other governmental agencies through formal comments on the document. More likely in California, an informal process of discussion and consultation will take place, particularly on decisions of greater than local interest. Activist citizens' and officials' personal knowledge of broader issues can be brought to bear, as may a loosely-linked array of public interest organizations and citizens groups, which form ad hoc coalitions on specific issues.

APPLICATION TO SECTION 201

The present system of interconnected citizen groups has not yet played a significant role in the Section 201 grants program, because of the reliance of the local applicant on EPA and the State for policy guidance, and because of the technical "mystique" surrounding the subject. Isolation of sewage treatment planning and management is almost intentionally maintained by technical practitioners, as noted earlier, in order to avoid public interference. Citizens' organizations may be expected to take a more active interest, however, during the coming development of the Section 208 planning program; this will presumably open questions about specific projects which heretofore have been overlooked as being routine.

EPA should be fully aware of the managerial role that potentially can be played by the structure of citizens organizations in California. The Agency should look beyond the mere solicitation of hearing comments that now represents the key (and perhaps only) role expected of citizens in local EPA-funded projects. The need is for overall coordination that relates to the overall policy intent of the various environmental laws. CEQA has significantly shown how citizen inquiries, participation, and lawsuits can be important in maintaining an ongoing concern for the law itself in government and in individual decisions. Several types of action are possible:

(1) One option available to EPA is to develop strong Federal criteria to get State legislation on who has standing to sue, and on the conditions for citizen recovery of legal costs of litigation. This could make the threat of legal tests by citizens become an active supplement to the direct intervention of EPA in individual issues. The comparable effects on land use issues under CEQA have been salutary in keeping the law alive.

(2) The Agency may consider direct stimulus, including financial incentives, to induce private individuals and citizens groups to participate in EPA-funded programs. At present, despite the potential importance of their contributions, and despite the possibility of millions of dollars being spent on wrong projects, it is exceedingly difficult or impossible for non-specialists to be remunerated for work on a sewer project plan. The EIR process has broadened the professional skills involved in such projects to a degree; but individuals representing a broader public interest are still on the outside. Such individuals and groups may in fact be capable of carrying out some of the policy overview and monitoring tasks that eventually fall to EPA in the Regional Office under the present pattern of organization--and which overload the Agency with project work. They may thus help enable the Agency, at very low comparative cost, to more adequately analyse and consider many projects, rather than a select few. And they may be of assistance in implementing the strategy of delegation discussed earlier, now under development by EPA Region IX staff.

(3) EPA should develop new criteria for the determination of competent citizen participation in its local projects; these should go

well beyond limited provisions such as the mere hearing of public testimony, as required by the present administrative regulations for the sewer grants program. Application of such criteria may involve the Agency increasingly in the monitoring and review of local management process, and decreasingly in the burdensome and demanding detailed review of project plans per se.

(4) In addressing its "paper overkill" problem under P.L. 92-500, EPA may wish to call public attention to its own mandate under the law to minimize its load of paperwork and procedures. Responses could take the form of a diversified, localized effort, challenging and encouraging local agencies, consulting engineers, and citizens organizations to find better alternatives to the present procedures. The focus of such an effort should be to address the policy intent of the law--and simultaneously of other environmental laws--while also proceeding with the substantive work of planning for needed facilities.

Local agency staff and consulting engineers may react very negatively to the above suggestions. But if Professor Beer's analysis is appropriate, such participation may be a "missing link" in overcoming some of the problems of policy and procedure now resulting from the constraint of EPA being pre-eminently responsible for policy-level review of projects. It could be in the engineering profession's long term interest to try to bring a more active form of ongoing, policy-oriented review into the local process, so that engineers may direct their energies more purposefully to the needs of the local client, rather than the Federal client. Such review could also serve engineers' short-term interests if it could help to overcome some of the problems of "super-documentation."

For example, in the case of the San Diego Metropolitan Sewer System facilities plan, non-specialist citizens were active participants in the procedure of alternative plan development and selection--following, and going somewhat beyond the recommendations of the EPA "Guidance." However, the local public and its citizens organizations were not asked how much documentation they would like to have, or of what kind. These are "managerial" process issues, which were assumed on all sides to be the responsibility of the EPA and its agent, the State Board. The lack of dialogue on this aspect of the program may have helped lead to the preparation of 2000 pages of documentation--which will probably be read by very few citizens or government officials.

PRIVATE PARTICIPATION IN ENVIRONMENTAL MANAGEMENT

One further note of interest may be derived from California's CEQA experience, once again relating to the specific example of Santa Clara County. It was mentioned that financial institutions in the County have begun to take an active interest in the assessment of environmental impacts. Lending institutions are in a particularly strong position to "call the tune" for the development industry. That has been their traditional role, contributing significantly to the "tunnel vision" of developers--focused on financing. EPA and the State could make better use of a collaborative relationship with the financial industry, and also with trade organizations of the building industry, in calling attention to their mutual interest in long term environmental objectives, and in stimulating their direct participation in efforts toward self-regulation. In Section VII, mention was made of the willingness of the Federal National Mortgage Association[122] to exert policy influence on development through its major influence in the secondary mortgage market. This opportunity represents for EPA a national analogue of the indirect control exerted by Santa Clara County. Other related types of opportunity for EPA, as well as State and local governments, to collaborate with the private sector could be a significant forthcoming development in environmental quality control. In some regards, the large scale financial, commercial, and industrial organizations--like the citizens organizations discussed earlier--represent important quasi-governmental assets for management purposes. Trade organizations may be capable of contributing to improve self-discipline among their own membership; the same may be true to a degree of the statewide and area-wide citizens organizations--if they saw that to be advantageous.

The planning and management resources of industry are substantial, and could be of value to governmental agencies in managing their local environments--if their purposes ran in parallel, and if the private interests found it was profitable (or necessary) to satisfy public policy intentions in the process of doing business.

The special case of the City of Irvine and the Irvine Company is noteworthy because it is simplified and somewhat idealized. The private sector is well-organized in this instance, and is better able to establish a somewhat collaborative position with government. Both the City and the Company maintain an active supervisory role in each project.

The Company has far more managerial and planning staff than the City, and has greater discretionary control over its own finances and over the utilization of its staff. The City, on the other hand, has considerable authority. The relationship appears to be more formal and correct than a strong mutual interest would suggest; environmentalists are politically strong in the City, and City staff avoid the appearance of "selling out." Nevertheless, the resources and power of the Company are available to implement policies and programs that are in the mutual interest of both the regulator and the regulated.

This particular situation, and the more general case, illustrate a new approach to the concept of delegation of governmental authority. Peter Drucker has advocated such a change, based on his extensive studies of corporate management:

> There is good reason today why soldiers, civil servants, and hospital administrators look to business management for concepts, principles, and practices. For business, during the last thirty years, has had to face, on a much smaller scale, the problem which modern government now faces: the incompatability between "governing" and

> "doing." Business management learned that the two have to be separated, and that the top organ, the decision maker, has to be detached from "doing." Otherwise he does not make decisions, and the "doing" does not get done either.
>
> In business this goes by the name of "decentralization." The term is misleading. It implies a weakening of the central organ, the top management of a business. The purpose of decentralization as a principle of structure and constitutional order is, however, to make the center, the top management of a business, strong and capable of performing the central, the top-management, task. The purpose is to make it possible for top management to concentrate on decision making and direction by sloughing off the "doing" to operating managements, each with its own mission and goals, and with its own sphere of action and autonomy.
>
> If this lesson were applied to government, the other institutions of society would then rightly become the "doers." "Decentralization" applied to government would not be just another form of "federalism" in which local rather than central government discharges the "doing" tasks. It would rather be a systematic policy of using the other, the nongovernmental institutions of the society of organizations, for the actual "doing," i.e., for performance, operations, execution.
>
> Such a policy might be called "reprivatization."[123]

This statement has a great deal in common with Professor Beer's deduction that planning should be homologous with organization, and not merely fragmented over the structure.

Drucker has also explained why the private sector should be anxious to participate specifically in impact analysis. In 1968 he stated--somewhat prophetically, before the enactment of NEPA--two laws of "social responsibility" for organizations. The first law is to limit impacts as much as possible--within the organization as well as outside it.

> The second law, perhaps even more important, is the duty to anticipate impact. It is the job of the organization to look ahead and to think through which of its impacts are likely to become social problems. And then it is the duty of the organization to try to prevent these undesirable side results.
>
> This is in the self-interest of the organization. Whenever an undesirable impact is not prevented by the organization itself, it ultimately boomerangs. It leads to regulation, to punitive laws, and to outside interference.[124]

In California's current EIR management program, a great deal of "sloughing off" of operating responsibility is occurring--from State to local government and, in significant measure, from local government to the private sector. Private developers in response have begun at their own initiative to consider environmental factors in their projects in order to minimize governmental interference in their operations. This tendency appears to increase to some degree where developers are actively encouraged to participate in the EIR process, and thus to learn for themselves what is expected.

SUMMARY

EPA programs at present--as exemplified by the Clean Water Grants Program--are excessively structured in their management and in their required documentation, to the detriment of local operators' capability to respond, and to the detriment of the Agency's own ability to address the full span of its legal responsibilities under the law. The State management of the EIR process in California, by contrast, has very little structure. Administrative regulation is very much the responsibility of the local agency, the citizenry, and the courts.

Review of local actions from the standpoint of policy statements in the law can take place in a short "feedback loop" under CEQA. The dominant dialogue in the review procedure is local, between the developer and the local government agency, or between the developer and the environmentalists, with the agency acting as an intermediary.

Review under the Grants Program from the standpoint of the policies and purposes of P.L. 92-500 depends largely on EPA at the Regional Office level. Dialogue is dominantly "vertical" between local agency staff, the State, and EPA. The amount of work required of the Agency is very great. It prevents the Agency from attending to a large number of cases, and also tends to submerge concern for some significant portions of the policies and purposes of P.L. 92-500.

A more decentralized, self-regulating approach to the grants program is possible, and appears to be strongly advisable. It could be based in part on California's overall experience under CEQA, and more particularly on some specific examples of successful, self-regulating local experience under CEQA. Of particular note from the standpoint of managerial strategy is the example of Santa Clara County, where maximal delegation of operating responsibility is given to private developers, to financial institutions, and to cities within the County. Policy overview is maintained and service offered by the County, but little actual staff effort is needed to sustain the program. The review procedure is held "in reserve" at the County level, and is applied primarily for appeals and for unusual kinds of projects.

What is most needed at present is a new perspective on the meaning of delegation of responsibility to the local level. It should not be a mere forcing down of decisions, but rather the stimulation of an active local dialogue in which a variety of interests are balanced, and in which a consciousness is maintained of overall policy intent--in order to avoid interference in local processes and decisionmaking authority.

The role of citizens and their network of public interest organizations --not only as commentators on specific project proposals, but as active participants in managerial processes--is seen in this report to be particularly important from EPA's point of view. Citizens with a general outlook on the long-term quality of life in the community are most likely of all participants, including many of their elected representatives, to reflect a point of view and policy intent like that of Congress when it passed the law. They thus may be best able to assist on a local level in relieving EPA of some of its policy review workload, allowing the Agency to perform, eventually, more of a service function --attending for technical review purposes primarily to unusual cases and to appeals of local-level, areawide, or State decisions. Citizens and their non-governmental organizations are increasingly well-prepared and willing to provide the needed assistance.

SECTION X

REFERENCES

1. (a) Trzyna, Thaddeus C., *Environmental Impact Requirements in the States*. Office of Research and Development, Environmental Protection Agency, Washington, D.C. (Socioeconomic Environmental Studies Series EPA R5-73-024), July 1973. (b) Trzyna, *Environmental Impact Requirements in the States: NEPA's Offspring*. Office of Research and Development, Environmental Protection Agency, Washington, D.C. (Socioeconomic Environmental Studies Series EPA-600/5-74-006), April 1974. (c) Trzyna and Arthur W. Jokela, *California Environmental Quality Act: Innovation in State and Local Decisionmaking*. Office of Research and Development, Environmental Protection Agency, Washington, D.C. (Socioeconomic Environmental Studies Series EPA-600/5-74-023), October 1974.

2. Cal. Public Resources Code Secs. 21000-21174. The full statute, as amended in 1972, is reproduced as Appendix A in Trzyna and Jokela (fn. 1(c)).

3. Discussed below in Section V.

4. Trzyna and Jokela, pp. 53-61, reproduced in part below in Section VI.

5. CEQA, Section 21001 (d).

6. See fn. 1 (a) and (b).

7. California's environmental problems, and the State's efforts to meet those problems, are well documented. For general treatment, see, e.g., Raymond F. Dasmann, *The Destruction of California* (Macmillan, 1965); Richard G. Lillard, *Eden in Jeopardy: Man's Prodigal Meddling with his Environment: The Southern California Experience* (Knopf, 1966); Alfred Heller, ed., *The California Tomorrow Plan*, rev. ed. (William Kaufmann, Inc., 1 First St., Los Altos, California 94022, 1973); and Robert C. Fellmeth, project director, *Politics of Land: Ralph Nader's Study Group Report on Land Use in California* (Grossman, 1973). See also the quarterly journal, *Cry California*, issued since 1965 by California Tomorrow (681 Market St., San Francisco 94105).

8. For summaries of California State environmental law, see Gerald R. Mylroie, ed., *California Environmental Law: A Guide* (Center for California Public Affairs, annual, 1971-); *Primer on Environmental Law in California* (California Department of Justice, 350 McAllister St., San Francisco 94102, revised periodically); and Joseph J. Brecher and Manuel E. Nestle, *Environmental Law Handbook* (University of California, Continuing Education of the

Bar, 2150 Shattuck Ave., Berkeley 94704, 1970). The latter includes much California material, but is now somewhat outdated.

9. The study is under the direction of Robert L. Small of Environmental Analysis Systems, Inc.

10. Council on Environmental Quality (CEQ), Environmental Quality, the Third Annual Report, (Washington, D.C., U.S. Government Printing Office, 1972), p.224. The full analysis of NEPA occupies Chapter 7, pp. 221-259.

11. Ibid., p. 222.

12. Ibid., p. 222.

13. Ibid., p. 225.

14. Ibid., p. 230.

15. See later discussion in Section VI.

16. In EDF v. Coastside County Water District, 27 Cal. App. 3d, 695, 701, (1972), the Court observed that "judicial interpretation of the federal law is strongly persuasive in our deciding the meaning of our state statute." Also see Friends of Mammoth, cited below, at 260-261.

17. Friends of Mammoth v. Mono County Board of Supervisors, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972); discussed in Trzyna and Jokela, op.cit., pp. 25 ff.

18. CEQ, op.cit., p. 255-256.

19. Ibid., p. 257.

20. Trzyna and Jokela, op.cit., pp. 40-50, 51.

21. Friends of Mammoth, at 254.

22. Ibid., at 263.

23. Burger v. Mendocino County, (45 Cal. App. 3d 322); a general discussion of the role of legislative intent in CEQA and NEPA may be found in the Attorney General's amicus curiae brief, pages 22-27, which is the source of several quotations here.

24. Ibid., p. 36.

25. San Francisco Ecology Center v. City and County of San Francisco, ___Cal. App. 3d___, 1975 (Slip Opinion, p. 5, May 9, 1975).

26. Gordon Getchel, The Irvine Company, pers. comm.

27. Myrdal, Gunnar, Challenge to Affluence (Vintage, New York, 1962), p. 98.

28. Byron Curl, pers. comm., November 1973, reaffirmed in 1975 by Jerry Brown, Administrative Assistant to the City, who emphasized that, contrary to earlier expectations, the EIR had turned out to be useful in protecting the City's environment, by providing a basis for excluding unsuitable industries, or for bargaining over mitigation of offensive features such as noise or excessive outdoor storage.

29. The analysis of the environmental review process on this project is one of four case studies in a companion project to the present one (untitled draft, Feb. 1975), carried out by Teknekron, Inc., for the EPA Washington Environmental Research Center. The study analyses the effectiveness of the use of NEPA statements by local government in evaluating sewage treatment projects. Part of the purpose of the present study is to compare the results of the Teknekron work with the operation of California local government under CEQA. Section IX of this report contains most of the discussion relevant to this purpose.

30. This is one of four case studies in a predecessor study to the one cited just above, Use of Environmental Analyses on Wastewater Facilities by Local Government, EPA Contract No. 68-01-1898.

31. "Draft Environmental Impact Report, Filtered Water Distribution System Improvements to 1980," URS Research Company for San Diego County Water Authority, October 1974, pp. 145ff and appendices.

32. Diane Barlow, pers. comm., March 1975.

33. Comment of a CWA staff member.

34. Comment in reply to an informal letter survey conducted independently in October 1973 by the Center for California Public Affairs in conjunction with the earlier study reported in Trzyna and Jokela, op.cit. The purpose of the survey was to get a general overview of local conditions and attitudes toward the EIR process after one-half year of operating experience, and to serve as a guide for field visits. Several quotations here are taken from responses to the circular. A surprisingly high rate of response was received, 82 returns out of 110 letters sent (75%), probably reflecting high interest level but low amount of communication at the time among local EIR practitioners; the lack of communication was particularly striking in view of the precedent-setting nature of the work—a point that was evident to many local practitioners. A number of formal and informal communication media have developed subsequently, notably the State's EIR Monitor, published biweekly by the Secretary for Resources. A recent development specifically intended to promote the mutual interest of EIR process administrators and consultants is the formation of an "Association of Environmental Professionals," mentioned later in Section VIII.

35. Anti-growth or anti-developer sympathies can be expressed on a larger scale where they are more significant politically, taking the form, for example of moratoria on major development projects such as have existed formally for the past year in the City of Del Mar and informally in the City of Sausalito (see later discussion in Section VI). A further form is the anti-growth ordinance, as illustrated by the pioneering ordinance of the City of Petaluma, California. A useful discussion of the ordinance and the related lawsuit is "The Petaluma Case," by John Hart, Cry California, Spring 1974, pp. 6-15.

36. The Santa Clara County Planning Department had provided an early stimulus to local environmental activities, and an example to the State, in its publication of an Environmental Action Directory (San Jose, July 1972). The directory provided a guide to sources of information and to responsible agencies; its purpose was to stimulate the formation of a framework of communication among citizens groups and governmental agencies (see Kaiser, et al., op.cit., fn. 90, p. 266). Hall's comment was made to a colloquium of Federal, State, and local officials, held in Sacramento on July 9, 1974 by the Center for California Public Affairs for the purpose of reviewing the prior study in the present series (Trzyna and Jokela, op.cit.) and of preparing for the work reported in the present study.

37. Carter, Steve, Murray Frost, Clare Rubin, and Lyle Sumek, Environmental Management and Local Government, Office of Research and Development, Environmental Protection Agency, Washington, D.C. (Socioeconomic Environmental Studies Series EPA-600/5-73-016), February 1974, p. 314. This study, prepared for EPA by the International City Managers Association, provides useful collateral reading for the present report; it analyses and summarizes the local government chief executive's view of environmental management, based on an extensive national survey. A complementary volume, also of value here, is Kaiser, et al., cited below (fn.90). It provides an analogous survey of planners' perspectives on environmental quality, emphasizing examples of current practice in local government.

38. See note below about the "rain dance effect" of repetitive analysis, noted in the discussion of San Diego County in Section VI.

39. This summarizes too briefly a wide range of viewpoints on the matter. The discussion is based on personal observation of the program, including numerous conversations with City staff and interested citizens. A major stimulus to the structural change now underway was the onset of environmental analysis (by the Environmental Quality Department) of community plans prepared by the Planning Department. One particular instance, the Mission Beach Precise Plan, had resulted in a public confrontation when the Environmental Quality Department offered, for purposes of environmental impact comparison, an alternative sketch plan that differed significantly from the proposed plan. This was apparently embarrassing to some policymakers and to the Planning Department,

and led to a re-evaluation of the Department's former position that it was healthy to have an entirely independent environmental review program.

40. Discussed in greater detail in Section VI.

41. Council on Environmental Quality (CEQ), Environmental Quality, the Fifth Annual Report, (Washington, D.C., U.S. Government Printing Office, 1974), pp. 372, 373, 378.

42. Ibid., pp. 374-378.

43. Ibid., pp. 378-381.

44. Robert L. Lane (survey comment).

45. Adolph, Charles, Richard Heuwinkel, Donald Lansing, and Richard Morefield, "California Environmental Impact Reports (EIR)," (mimeo, undated ms.), p. 25.

46. The City of Palo Alto funded an influential "Environmental Design Study" of the Palo Alto Foothills (Open Space vs. Development, published by the City in March, 1971), which concluded that future development of the study area of 6,100 acreas was economically unjustified, because it would require protracted subsidy of City tax funds to provide services. Charles McCabe reviewed the study in the San Francisco Chronicle of March 18, 1971, noting "The results of this environmental design study have been described as a 'sensational breakthrough' and the words do not seem too strong." The implications of this and similar studies contributed significantly to the high level of interest in environmental analysis leading up to the Mammoth decision and AB 889 in the following year.

47. Elizabeth S. Crowder, City of Palo Alto (survey response).

48. CEQ Third Annual Report, op.cit., p. 259.

49. League of California Cities "Action Plan for Environmental Control and Land Use Authority," October 1973, p. 1.

50. State of California, Office of Planning and Research, Local Government Reform Task Force Report, Sacramento, 1974.

51. Hagman, Donald G., "NEPA-like State Laws--A Description and a Critique," draft address to the Annual Banquet, Urban Law Annual, Washington University, April 7, 1973, pp. 63-64.

52. C. F. Ridenour, pers. comm., February 1975.

53. Jack Green, pers. comm., May 1975.

54. California Journal, April 1973, p. 135.

55. Local Government Reform Task Force Report, op.cit., Technical Papers, Task IV, pp. 33-39.

56. Bosselman, Fred, and David Callies, The Quiet Revolution in Land Use Control, CEQ (Washington, D.C., U.S. Gov't Printing Office, 1971).

57. Ibid., p. 1.

58. Ibid., p. 316.

59. Ibid., p. 3.

60. CEQ, Fifth Annual Report, op.cit., p. 36.

61. Prepared speech given to a "Conference on Land Use Planning in America," University of California, Berkeley, December 16, 1974.

62. Beer, Stafford, "The Liberty Machine," Keynote Address to the Conference on the Environment, American Society for Cybernetics, Washington, D.C., October 8, 1970, p. 8.

63. League of California Cities, op.cit., p. 2.

64. Discussed later in Section IX. In essence it would delegate authority to the local level by requiring the local jurisdiction itself to accommodate Federal standards and criteria as a condition of grant and project approval.

65. Discussion of the EIR management programs is based largely on private conversations with the following individuals: David Nielsen, County of San Diego; Linda Shumer, City of Irvine; Gordon Getchel (staff member) and Ray Belknap (consultant), The Irvine Company; Herb Case, City of Sausalito; Gary Binger, City of Del Mar; Richard Hall, County of Santa Clara; Charles Frank and Robert McKechnie, County of Sacramento.

66. Cited earlier (fn.24).

67. The San Diego County EIR program staff is now large compared to Santa Clara County's, in part because it had over a million dollars of "outside" funds to spend on a two-year environmental program demonstration project. That doesn't necessarily make San Diego's program less important as a model, but it certainly has helped to make the roles of the EIR diverge in the two experiments. San Diego County's program, partly because of its size and budget, was incidentally important as a laboratory program for individuals such as Richard Hall, who was a consultant to the IREM project (and a faculty member in the Planning Department at California State Polytechnic University, Pomona) before assuming his duties at Santa Clara County. Another "graduate" of the IREM experience was Albert F. Reynolds, who served as Executive Officer in EDA before becomming Environmental Coordinator for Santa Barbara County. He is President and co-founder of the Association of Environmental Professionals, which is mentioned later (in Section VIII) in the course of a more general discussion of the educational role of the EIR process in California.

68. Robert L. Small, then Administrator of the San Diego County Environmental Development Agency (Spring 1971), referring to a very early attempt in that agency to implement CEQA.

69. Croke, E.J., K. G. Croke, A. S. Kennedy, and L. J. Hover, "The Relationship Between Land Use and Environmental Protection," Argonne National Laboratory Center for Environmental Studies, (Argonne, Illinois, March 1972), p. 40.

70. Presentation to "A Conference on Land Use Planning in America: Alternative Policies and Practices," University of California, Berkeley, December 16-18, 1974.

71. League of California Cities, "Action Plan," op.cit.

72. Drucker, Peter F., Technology, Management, and Society, (Harper & Row, New York; first published in Technology and Culture, Spring 1966), p. 131.

73. Pers. comm., Sept. 1973.

74. Pointed out by Ronald Smothers.

75. Yost, Nicholas, presentation at CEQ-sponsored "Conference on State Environmental Impact Statement Processes," Nov. 18-19, 1974.

76. William Matuszeski, workshop discussion at conference cited above.

77. Oakley Hunter, pers. comm., June 1975.

78. Trzyna and Jokela, op.cit., p. 60.

79. Ibid., p. 27.

80. In which a statewide staff of ten fulltime Deputy Attorneys General is organized as an Environmental Unit with the assignment of initiating and supporting significant legal actions under CEQA, NEPA, and other environmental laws.

81. CEQ, Fifth Annual Report, op.cit., pp. 393-395.

82. Mogulof, Melvin B., Intergovernmental Relations in Land Use Control: The Case of the California Coastal Zone, The Urban Institute, Land Use Center Working Paper 0785-01 (Washington, D.C., May 1974), p. 69.

83. Construction figures in this section are from the San Diego Union Review of Business Activities; numbers of professionals in the following paragraphs are from the local chapters of the American Society of Civil Engineers, the American Institute of Architects, the American Society of Landscape Architects, and the San Diego Board of Realtors. City and County staff provided documents and data about their own offices, and assisted with

rough estimates of numbers of professionals and costs. The purpose of this brief survey of costs is merely to provide gross "guideline" estimates; all errors of fact or judgment are the author's.

84. Professor Emil Genetelli, Rutgers University Department of Environmental Sciences, pers. comm., June 1975.

85. CEQ, Third Annual Report, op.cit., p. 258.

86. C. F. Ridenour, pers. comm., January 1975.

87. Editorial, Journal of the American Institute of Planners, January 1972, pp. 1-2.

88. Ronald Smothers provided the basic discussion for this paragraph.

89. Survey responses, fall 1973.

90. Kaiser, Edward J., Karl Elfers, Sidney Cohn, Pegga A. Reichert, Maynard M. Hufschmidt, and Raymond E. Stanland, Jr., Promoting Environmental Quality Through Urban Planning and Control, Office of Research and Development, EPA, Washington, D.C. (Socioeconomic Environmental Studies Series EPA-600/5-73-015, February 1974). This report may be consulted for a nationwide survey of a broad range of "mainstream" and "cutting edge" practices in planning and environmental quality control.

91. Environmental Protection Agency, "Guidance for Facilities Planning," Second Edition (Washington, D.C., October 1974), pp. 102.

92. California State Water Resources Control Board, "Facilities Plan and Project Plan Guidance" (Sacramento, January 1975), pp. 49.

93. EPA Office of Federal Activities, "Manual for Preparation of Environmental Impact Statements for Wastewater Treatment Works, Facilities Plans, and 208 Areawide Waste Treatment Management Plans" (Washington, D.C., July 1974), pp. 35.

94. With regard to the specific problem of consolidation of the EIS into the planning program, some California experience under CEQA is germane in view of efforts being taken in consolidating the EIR with various types of land use planning at the local level. The consolidation problem is somewhat simpler in the 201 grants program, however, in that the procedures and documentation for the plan and the EIS are very similar, and may be nearly superimposed, provided a suitable management arrangement can be found to suit legal requirements for a separate EIS document. The more general problem of organization for preparation and review of both documents is of more central concern, and the plan and EIS are assumed to function as a unit for discussion purposes here.

95. Op.cit., pp. 14-33, plus further discussion of certain sections. A project is defined as "complex" if it satisfies any of the following criteria: within an SMSA (Federal Standard Metropolitan Statistical Area); new investment likely to exceed $5 million; area growth rate above the national average; environmental setting relatively sensitive; or opportunities exist for regionalization of sewage treatment.

96. Caldwell, David H., Charles Gilman Hyde, and A. M. Rawn, Report on the Collection, Treatment and Disposal of the Sewage of San Diego County, California (known locally as "the Rawn Report"), San Diego County Board of Supervisors (San Diego, September 1952), pp. 515.

97. Pers. comm., Dennis A. O'Leary, Lowry and Associates, San Diego.

98. The author attempted to invoke this opportunity in San Diego as a participant in early stages of the project, by actively advocating an experimental program of minimal, public-oriented documentation.

99. Heckroth, Charlie, "'Water...water...everywhere...nor any drop to drink.' Paper...paper...everywhere...creating such a stink.", Editorial, Water and Wastes Engineering, April 1974, p. 25.

100. Parkhurst, John D., "WPCF President's Message," Journal of the Water Pollution Control Federation, September 1974, p. 2091.

101. Urban Systems Research & Engineering, Interceptor Sewers and Suburban Sprawl: The Impact of Construction Grants on Residential Land Use, prepared for CEQ, Contract No. EQ4C027 (Washington, D.C., July 1974), Executive Summary.

102. Heckroth, Charles W., "P.L. 92-500 (Two Years Later) Is Not the Answer," Water and Wastes Engineering, December 1974, p. 39.

103. Teknekron, Inc., op.cit. (fn.29), p. 24.

104. Ibid.

105. Ibid., p. 9.

106. Ibid., p. 25.

107. Environmental Protection Agency, Water Quality Strategy Paper, Second Edition, (Washington, D.C., March 15, 1974), p. 79. The paper indicates that impact statements should be prepared for smaller projects which have "major effects on public parks or historic sites, are located on wetlands or the habitat of an endangered species, induce growth affecting non-water quality aspects of the environment, or divert water from the basin with resulting adverse effects on water quality or quantity."

108. Ibid., p. 11.

109. Supervisor Bill Kortum, Sonoma County, pers. comm. April 1975.

110. Murray Warden, pers. comm., September 1974.

111. Trzyna and Jokela, op.cit., pp. 20, 21, 25, 29.

112. California Coastal Zone Conservation Commission, Preliminary Coastal Plan, Hearing Draft (San Francisco, March 1975), Policy 7, p. 27.

113. Ibid., Policies 24 and 25, pp. 54-56.

114. Robie, Ronald, Luncheon Address at a program on "Water Reclamation" co-sponsored by the State Water Resources Control Board and University Extension, University of California, Davis.

115. Mrs. Jean Auer, pers. comm., April 1975.

116. Discussion is based on conversations with Russell Freeman, Deputy Administrator, EPA Region IX, and Andy Mank of the Administrator's staff.

117. P.L. 93-383; a principal feature of the act was the conversion of several "categorical grant" programs (urban renewal, open space, sewers, etc.) into lump-sum "block grants" based on a formula involving factors such as population amount and density, and the proportion of low-income families. The immense former amount of paperwork for grant applications and program management was largely dispensed with, and replaced with simple certifications by the chief executive of the jurisdiction that certain features of intent of the law had been complied with. An incentive to compliance was the promise of post-audit by Federal officers of the Department of Housing and Urban Development (HUD), which had administered the previous categorical programs. P.L. 93-383 authorized delegation of NEPA responsibilities to local agencies for the affected programs. When the law first passed, it appeared that California's experience of local self-implementation of an EIR program might be replayed to some degree on a national scale, since over a thousand local jurisdictions were likely to receive grants. However, as of June 1, 1975, only twelve draft EIS documents from local agencies had been received by CEQ (Michael Kane, pers. comm.).

118. "...fundamental responsibility for conducting much of the effort should reside with State and local governments. The tasks are too many and too sensitive to local conditions to be successfully managed in detail on a national scale. Agencies that are closer to the origins of water pollution must provide the direction for its control." Water Quality Strategy Paper, op.cit., pp. 3-4.

119. Beer, op.cit. (fn.63).

120. Beer, op.cit., p. 10.

121. Benninghoven speech before the Planning and Conservation League, November 1973, quoted above in Section V.

122. Oakley Hunter, op.cit.

123. Drucker, Peter, The Age of Discontinuity, (Harper & Row, New York, 1969), pp. 233-234.

124. Ibid., pp. 202-203.

SECTION XI

APPENDICES

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APPENDIX A

CALIFORNIA ENVIRONMENTAL QUALITY ACT: POLICY STATEMENT

(Public Resources Code Secs. 21000 et seq.)

21000. The Legislature finds and declares as follows:

(a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

(b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.

(c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.

(d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.

(e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(f) The interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted efforts by public and private interests to enhance environmental quality and to control environmental pollution.

(g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage.

21001. The Legislature further finds and declares that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

APPENDIX B

NATIONAL ENVIRONMENTAL POLICY ACT: POLICY STATEMENT

(Excerpt from Public Law 91-190)

PURPOSE

Sec. 1. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101. (a) The Congress, recognizing the profund impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further that critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may--

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

APPENDIX C

SELECTED PUBLIC HEARING REPORTS

GOVERNOR'S TASK FORCE ON LOCAL GOVERNMENT REFORM

HEARING #3, SANTA ROSA, SONOMA COUNTY, FEBRUARY 23, 1973

There was a strong tone of provincialism at this hearing. Many of the witnesses expressed resentment of state interference in local affairs. Particular objections were expressed about state mandated local programs, and several witnesses objected to what they consider forced membership of Sonoma County in ABAG. County officials in this area particularly charge that state policies are rendering local governments weak and in some instances inoperative. County and city officials alike wish to see more flexibility in local financing and object to strictures like those of SB 90 (1972). City officials object to what they consider a push from the state toward regional government. They contend that the Joint Exercise of Powers mechanism is sufficient for interjurisdictional efforts when necessary and want "no state interference," but they want the state to provide incentives for establishing "Joint Powers" agencies.

HEARING #5, SAN FRANCISCO, SAN FRANCISCO COUNTY, MARCH 1, 1973

There was an overall concern expressed about the future of Local Government Reform. This attitude was reflected in discussions about LAFCO, annexation, finance, special districts, regionalism and citizen involvement. City members' interests lie in improving citizen access to government, restructuring the tax system to improve inequities, obtaining more land use control, revising annexation laws to ease the procedure of incorporation and giving more power to the people. Special district people maintained that neither structure nor fiscal responsibility need to be changed, but that services to the people should be delivered regardless of the boundaries. Academicians discussed the consequences of centralization and decentralization. Areawide planning, they feel, may be unworkable. Concerning education, the desire was expressed for financial support by state levied taxes. Multipurpose regional planning was felt to be an answer to solving problems by the citizen groups.

HEARING #6, BAKERSFIELD, KERN COUNTY, MARCH 9, 1973

Witnesses at this hearing were virtually all local officials or academics. Their major concern was that the state or federal government might move to establish regional government in their area. Their specific reservations centered on the inclusion of Kern County in a multi-county regional planning organization. City officials at this hearing were very concerned about governmental fragmentation particularly with what they see as excessive problems imposed on them through the proliferation of special districts. They wish to deal with this problem through the county's LAFCO and want the state to strengthen their ability to do so. They also seek annexation law reform and liberalization of municipal finance. District officials defended their record and seek to maintain the status quo. County officials concur in the concern over fragmentation and claim that excessive state and federal preoccupation with "regional" problems undercuts the efforts of counties in these areas.

The academics who testified at this hearing spoke about the relationship of their specialties to the matters under investigation. They spoke of the potential greater use of systems analysis, the need to develop greater expertise and information at the local level, and the investigation of new and old political devices to re-vitalize local government. Virtually all witnesses felt that regionalism beyond Kern County limits was a mistake.

HEARING #8, BERKELEY, ALAMEDA COUNTY, MARCH 16, 1974

This was the hearing of the special districts and the experts. The witnesses and the audience were almost exclusively made up of local officials and academics specializing in local government affairs. Several academic witnesses were from the Institute of Governmental Studies at U.C. Berkeley. Representatives of special districts were by far the most numerous group, and they mounted a counter-attack on what they consider a generalized movement to do away with their agencies. They contended that the charges of inefficiency and "invisibility" against them are unwaranted. They claim they are closer to the people thus providing better access, more responsiveness, and a broader local choice of public services. Their watch-word is, "Bigger does not mean better."

Most academic witnesses voiced a need for multipurpose regional governments with real clout in major metropolitan areas to deal with problems that are inescapably interjurisdictional. They also stressed the need to investigate the role of state taxing policies in contributing to poorly planned development and service/tax inequities.

City and county officials were advocating change. They were particularly interested in changes to strengthen general purpose governments and facilitate the absorption of special districts in urban fringe areas. The lines at this hearing were clearly drawn between general government and special government.

HEARING #10, PASADENA, LOS ANGELES COUNTY, APRIL 6, 1973

This hearing was characterized by a very strong defense of the status quo and by expressions of anxiety over the state's role in reforming local government. This is seen as an incursion of state authority into areas where some citizens feel it has no legitimate interests. The proceedings were repeatedly disrupted by several local citizens' groups.

The incorporated cities were heavily represented and the major thrust of their testimony was that as long as cities were self-supporting and able to provide essential services, they should be allowed to do so without interference from the state. Instead, they assert, the state continues to place increasing administrative and financial burdens on cities making their task nearly impossible. Some concede the need to develop mechanisms for cooperative effort but, they insist, accessibility and responsiveness must remain primary.

Representatives of special districts and authorities testified that interjurisdictional planning, rather than consolidated departments, would be sufficient to achieve coordination and economies. They responded to arguments of several academics that consolidation was necessary to improve many services and to reduce service costs.

HEARING #11, EUREKA, HUMBOLDT COUNTY, APRIL 26, 1973

The general tone of the meeting was that of accomplishment and positive anticipation that it would result in action. Topics covered were LAFCOs, annexation, and planning law. City representatives recommended that county service areas should replace independent districts, that there should be greater utilization of the joint powers agreement, and that cities should have greater power over land use decisions. County officials expressed the hope that CSAC's Modernization Committee would be an active liaison for the county and the local government reform project. Ten principles to be used as a basis for study were presented. Problems of small counties were discussed and suggestions and approval of substate districts and single county COGs were made. Others registered complaints about the abundance of single purpose agencies. The people from special districts stated that one of the main reasons that there was a need for special districts was because they provide services not otherwise available through formal government agencies. There was also talk about taxes and by what means could they best be used for services.

HEARING #12, LONG BEACH, LOS ANGELES COUNTY, APRIL 27, 1973

Representatives of various groups offered constructive criticism and suggestions regarding annexation, tax issues and government structure. Again, city officials desired to have more control over annexation of unincorporated areas. Concern was also expressed about the problems which have appeared as a result of a lack of understanding on part of the state, of local government structure. SB 90 is criticized, especially as it concerns encroachment on areas which are constitutionally of local concern. Testimony also indicated a desire for the state to finance programs which it mandates. Special districts felt that they were left in a difficult financial situation because of the Local Assistance Act of 1972 and SB 90. Libraries, in particular, need financial support. Academicians expressed an interest in having greater control and citizen participation in local government. Some other major topics discussed were a list of items which must be followed in order for a democracy to work, bases for operating a governmental system to replace present forms of local and regional government, and reasons why reform is resisted. Some citizens were opposed to regional government as it takes power away from the people and they felt that local government should be given more authority. League of Women Voters stated that government officials should be elected and more responsive to the people.

HEARING #13, SAN DIEGO, SAN DIEGO COUNTY, APRIL 27, 1973

Great emphasis was given to San Diego being a single county district. The problem of the inability of the governments to work together still exists, however, particularly where boundaries are crossed. City officials indicated a need for studying, as component of local government reform, the allocation of limited resources, regional planning, and requirements for good management. Flexibility, county officials feel, is the key to any reform program. State legislation and financial incentives could be a help in restructuring San Diego's local government organization, particularly in such areas as contracting with counties for special services to avoid duplication. Special district testimony revealed that consolidation would result in savings in overhead cost. LAFCO stated that since San Diego was a single county region, planning activities were facilitated. Financial mechanisms were imperative, they said, to the encouragement of reform. Special interest groups, academicians, and private citizens all expressed concern about citizen alienation, lack of citizen control, and responsible political leadership.

HEARING #14, SAN JOSE, SANTA CLARA COUNTY, MAY 11, 1973

This meeting was composite of those who felt that reorganization of local government was part of a conspiracy and those with opposing views. Cities maintained that the biggest problem facing cities is money. The state mandates programs but does not back them financially. Effective reform can be accomplished by setting up objectives and providing proper finance. Small cities were concerned with public access and control of government. The importance of having a better relationship between state and local government was also discussed, as well as the elimination of special districts. The county representatives spoke primarily about organizational adjustments. As an effort to reorganize government and not alienate the taxpayer, a constitutional convention would be in order.

HEARING #16, REDDING, SHASTA COUNTY, MAY 24, 1973

Much of the testimony centered on government in rural areas with emerging rural problems. Elements fearing an international conspiracy were also present. County representatives maintained that one way that reform efforts could assist counties to meet the requirements of local government is to assign public services specifically to the area which it involves, not by the number of people who live there. Some feared that local government reform meant an undermining of home rule and the installation of regionalism. Weaknesses in California government, according to academicians, included lack of administrative responsibility in the counties, annexation, citizen interest, and multipurpose special districts. The primary problem of multipurpose districts, which could be an alternative to full incorporation of areas on the urban fringe, is revenue. The Community Planning Council needs support, as does better funding for early childhood programs, citizen involvement, and the accessibility and responsiveness of government. Taxpayers Association representatives states that they believe that better results could occur if the functions now being performed by the counties were performed by the state. The cities spoke for more city control and authority. A newspaper spokesman said that regionalism was not an answer to local government problems. Local government can be made more effective if the present problem of the ineffectiveness of county governments to deal with local problems is alleviated.

HEARING #18, SANTA ANA, ORANGE COUNTY, JUNE 1, 1973

This meeting was very constructive and the witnesses were well informed. Some county officials felt that as long as local government enjoys the confidence of its constituents, it should stay as is. Others indicated that basic problems of local government officials were a result of a lack of management techniques and too much political competition, also no financial support for state mandated programs. If changes in local government are made, they must be made at all levels because of the complex interrelationships. In order to have strong local government which is necessary because it is more responsive to the people, city officials say that adequate legal authority and more money is a must. Some wanted special districts eliminated and more consolidation to eliminate waste. Comments were also made that intergovernmental reform would be more successful if it were a result of voluntary, not mandated, power. Academicians thought that decentralization would preserve citizen satisfaction and accountability of officials. Special district people stated that elimination of districts just for the sake of elimination is not progress. LAFCOs were concerned with public access and control of government and voters who have lost confidence in their government. League of Women Voters representatives stated that LAFCO should be delegated more power to handle services in a situation of rapid growth.

HEARING #22, MONTEREY, MONTEREY COUNTY, JULY 6, 1973

This hearing had a mood of apprehension. Many witnesses voiced opposition to any move toward regional government and objected to what they consider to be state and federal encroachment on local affairs. On the question of "regionalism" a fine line was drawn between regional government and regional planning. Several witnesses conceded that in specific areas of policy there may well be a need for regional planning and would not object to that per se. However, they say, this concession carries the danger that it may lead to regional government to which they are vehemently opposed. The tenor of the testimony was that the state should research alternatives and provide technical assistance to locals who are considering reform.

Further, they called for reform of state laws and administrative policies to facilitate the processes of locally initiated reforms. Local officials showed an unusally keen interest in altering county boundaries. Representatives of citizens groups stressed that service programs and their funding should be kept to the lowest possible level of government and that state restrictions on local revenue sources should be relaxed. The call here is for stronger home rule and no regional government. A resolution of one citizens' group charges that regional government and all other efforts toward local government reform are part of a conspiracy to usurp the constitutional rights of the people and establish a national dictatorship.

HEARING #23, CHICO, BUTTE COUNTY, JULY 20, 1973

Special districts and county officials were heavily represented at this meeting. Main concerns indicated were state mandated programs and a lack of citizen control and participation in government. Some county representatives took the position that consolidation should be avoided. Others stated that it was helpful in situations where economy and efficiency were improved. The difference between urban and rural problems was also emphasized. Rural interests resist regional government as governmental service systems seem to be carried out most effectively when managed locally. Again it was mentioned that mandated state programs should also be financed. District spokesmen felt that special districts should have greater access to fiscal resources and should be evaluated on their own merit. The great advantage here is that since districts concentrate on a single subject, they become experts in that area. LAFCO people expressed a need to be backed by legislation. Academicians made the point that a way to prevent the flow of power to a centralized agency is to give more power to local government. Private citizens said that local options were being neglected as a result of state mandates, while along similar lines, the League of Women Voters expressed a concern for a lack of citizen access and control.

HEARING #24, SACRAMENTO, SACRAMENTO COUNTY, JULY 27, 1973

Although representatives from the county, city and special districts attended this meeting, this hearing was most noted for its response from private citizens. The county people urged the establishment of county government reform models. They believed that localities should be urged to reform themselves as it was impossible to rely on legislative or executive mandate. Also questioned was the amount of control the region would have over the county. City problems centered on a source of revenue versus the demand for expenditures, annexation laws, taxation policies, and confused lines of authority. One of the ways problems of the special districts could be improved is through the establishment of a Comprehensive Land Use Plan. Special district delegates said that because they are closest to the people, they know and can best fulfill their needs. The Northern California-Nevada Resource Organization expressed a need for multicounty-city planning in the form of general and special purpose government. Some private citizens feared that regionalism put government into the hands of a few.

Flexibility of local governments to reorganize should be allowed. A two tier system of government was talked about, always with concern for improved public control of government. The state was named responsible for not protecting local government functions. Library spokesmen used their cooperative system as a good example of intergovernmental relations. Libraries, however, are badly in need of financial backing. Emphasis was also given regarding the movement of a merger between public and school libraries. A state official testified as to what he felt to be a lack of intelligence in economic planning. Testimony by the Association of Governments was given regarding growth and services and consolidation of certain city-county functions.

APPENDIX D

DRAFT CODE OF ETHICAL PRACTICE

PREPARATION AND PROCESSING OF ENVIRONMENTAL DOCUMENTS

ASSOCIATION OF ENVIRONMENTAL PROFESSIONALS*

1. WHEREAS, the goal of my endeavor is to provide a full-disclosure environmental document in which decision makers and the public can place full confidence,

2. THEREFORE, I subscribe to this Code of Ethical Practice:

3. I WILL examine all relationships or actions which could be legitimately interpreted as a conflict of interest by clients, officials, the public, or my peers; and I will fully disclose my financial or personal interests in the project and each alternative, including the no-build or null alternative.

4. I WILL encourage, by every reasonable means, that environmental planning begin in the earliest stages of project conceptualization.

5. I WILL refuse to create an environmental document as a justification of a project or as a platform for opposition or advocacy.

6. I WILL abstain from attempting to delay the outcome of an action or project through the environmental document process.

7. I WILL produce an objective environmental document; I will not allow any of my relationships with clients, employers, or others to interfere with my duty to provide a full disclosure environmental document.

8. IF PREPARING A DOCUMENT PURSUANT TO THE ENVIRONMENTAL DOCUMENT PROCESS, I WILL:

9. define a level of investigation appropriate to the nature and scope of the proposed project or action, and its probable impacts;

10. select and use qualified persons of pertinent disciplines in the conduct of the study;

11. incorporate the best principles of the design and environmental planning arts in recommending measures for mitigation of environmental harm and enhancement of environmental quality;

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*The Association may be contacted in care of the Office of Environmental Quality, County of Santa Barbara, Santa Barbara, California 93101.

12. rely upon the independent judgment of an interdisciplinary team to determine impacts, define and evaluate all reasonable alternatives to the proposed action, and assess short-term versus long-term productivity with and without the project or action;

13. encourage public participation from the beginning in an open, frank and productive atmosphere to stimulate democratic consensus;

14. write in a clear and accurate manner, to achieve objectivity and remove all possible bias;

15. list all study participants, their qualifications and affiliations;

16. cite all sources, written and oral;

17. strive to create a complete, scientifically accurate, objective environmental document that can be defended professionally.

18. IF REVIEWING AN ENVIRONMENTAL DOCUMENT, I WILL:

19. insist upon review of original technical reports or findings upon which conclusions or recommendations summarized in the environmental document are based, to ensure they are in conformity with applicable laws and guidelines;

20. assure that the assessment reflects my own best judgment where I am qualified to judge, and that of independent persons expert in areas beyond my capability to assess effects deemed "significant";

21. determine that the document is consistent with all pertinent laws, ordinances, guidelines, plans and policies to the best of my knowledge and ability;

22. certify acceptability of the environmental document only if I am satisfied that it has been prepared and reviewed in conformance with all of the above.

APPENDIX E

STATE ENVIRONMENTAL IMPACT STATEMENT REQUIREMENTS

The following information and comments, provided by the Council on Environmental Quality, updates (as of May 1975) the summary of state requirements in Appendix A of Environmental Impact Requirements in the States: NEPA's Offspring, by Thaddeus C. Trzyna (EPA-600/5-74-006), April 1974.

STATES WITH COMPREHENSIVE STATUTORY REQUIREMENTS

CALIFORNIA

Source: California Environmental Quality Act of 1970, Cal. Pub. Res. Code, Section 21000-21174 (Supp. 1972), as amended by Ch. 56, Statutes of 1974, March 4, 1974, as amended by Ch. 276, Statutes of 1974, Section 21100(c), January 7, 1975.

Guidelines: 14 Cal. Admin. Code Ch. 3, Guidelines for Implementation of the California Environmental Quality Act of 1970 (Register 73, No. 50--12--15--73), as amended by order of the Secretary for Resources, March 22, 1974, as amended January 7, 1975, as amended April 1975. Guidelines are prepared by the Resources Agency of California.

State Contact: Norman E. Hill, Special Assistant to the Secretary for Resources, The Resources Agency, 1414 Ninth Street, Sacramento, California 95815 (Phone: 916-445-9134).

CONNECTICUT

Source: Connecticut Environmental Policy Act of 1973, Pub. Act 73-562 (approved June 22, 1973). Conn. Gen. Stat. Ann. Ch. 439, Section 22a-1, et seq. (Cum. Supp. 1974-1975) (effective February 1, 1975).

Guidelines: New guidelines are being prepared by the Department of Environmental Protection. Currently in effect: "Draft Guidelines for the Implementation of Executive Order No. 16," transmitted to the state agencies under Memorandum from the Governor, dated December 13, 1972.

State Contact: Mary Ann Massey, Assistant Director of Planning and Research, Department of Environmental Protection, State Office Building, Hartford, Connecticut 06115 (Phone: 203-566-4256).

HAWAII

Source: Act 246, Sess. Laws of Hawaii (approved June 4, 1974), Hawaii Rev. Stat. Ch. 334 (1974). This Act supercedes the previous Governor's Executive Order of August 23, 1971.

Guidelines: Guidelines are being prepared by the Hawaii Environmental Quality Commission.

State Contact: Richard E. Marland, Director, Office of Environmental Quality Control, Office of the Governor, 550 Halekauwila Street, Room 301, Honolulu, Hawaii 96813 (Phone: 808-548-6915).

INDIANA

Source: IC 1971, 13-1-10, added by Pub. L. 98, 1972, Ind. Stat. Ann. Section 35-5301, *et seq.* (Supp. 1971).

Guidelines: Guidelines are being prepared by the Environmental Management Board and are scheduled to be completed by fall 1975.

State Contact: Ralph Pickard, Technical Secretary, Environmental Management Board, 1300 W. Michigan Street, Indianapolis, Indiana 46206 (Phone: 317-633-4420).

MARYLAND

Source: Maryland Environmental Policy Act of 1973, Ch. 702, Md. Acts of 1973, 41 Ann. Code of Md., Section 447-451, (Cum. Supp. 1973), and Ch. 703, Md. Acts of 1973 Natural Res. Art., Ann. Code of Md., Section 1-301 *et seq.* (1974 Volume) as amended by Ch. 129 of the Md. Acts of 1975, Section 1-301(c) (effective July 1, 1975).

Guidelines: "Revised Guidelines for Implementation of the Maryland Environmental Policy Act" issued by the Secretary of the Department of Natural Resources, June 15, 1974.

State Contact: Paul McKee, Assistant Secretary, Department of Natural Resources, Tawes State Building, Annapolis, Maryland 21404 (Phone: 301-267-5548).

MASSACHUSETTS

Source: Ch. 781, Acts of 1972, Ann. Laws Mass. Ch. 30, Section 61-62. (Cum. Supp. 1973), as amended by Ch. 257 of the Acts of 1974.

Guidelines: "Regulations to Create a Uniform System for the Preparation of Environmental Impact Reports," dated July 6, 1973, as amended October 15, 1973, as amended January 8, 1975. Guidelines are prepared by the Executive Office of Environmental Affairs.

State Contact: Matthew B. Connolly, Jr., Chief Planner, Executive Office of Environmental Affairs, 18 Tremont Street, Boston, Massachusetts 20488 (Phone: 617-727-2808).

MINNESOTA

Source: Minnesota Environmental Policy Act of 1973, Ch. 412, Laws of 1973, Minn. Stat. Ann. Ch. 116D (Cum. Supp. 1974).

Guidelines: "Rules and Regulations for Environmental Impact Statements," issued by the Minnesota Environmental Quality Council on April 4, 1974. These guidelines are presently being revised with distribution scheduled for July 1975.

State Contact: Jock Robertson, Manager, Environmental Analysis Program, Environmental Quality Council, Capital Square Building, 559 Cedar Street, St. Paul, Minnesota 55101 (Phone: 612-296-2757).

MONTANA

Source: Montana Environmental Policy Act of 1971, Ch. 238, L. 1971, Rev. Code Mont., Section 69-6501, et seq. (Cum. Supp. 1973). Statute was amended in 1975 (Ch. 65, Section 69-6508 and Section 69-6509), but as of April 15, 1975 had not been signed into law.

Guidelines: Montana Environmental Quality Council, "Revised Guidelines for Environmental Impact Statements Required by the Montana Environmental Policy Act of 1971," issued September 19, 1973.

State Contact: Loren L. Bahls, PhD., Ecologist, Montana Environmental Quality Council, Capitol Station, Helena, Montana 59601 (Phone: 406-449-3742).

NORTH CAROLINA

Source: North Carolina Environmental Policy Act of 1971 (1971, c. 1203, s. 1), N.C. Gen. Stat. Ch. 113A (Cum. Supp. 1973).

Guidelines: North Carolina Department of Administration, "Guidelines for the Implementation of the Environmental Policy Act of 1971," issued February 18, 1972.

State Contact: D. Keith Whitenight, Environmental Planning Coordinator, Department of Natural and Economic Resources, P.O. Box 27687, Raleigh, North Carolina 27611 (Phone: 919-829-3838).

SOUTH DAKOTA

Source: South Dakota Environmental Policy Act, SL 1974, Ch. 245 (approved March 2, 1974), S.D. Comp. Laws 1967 Ch. 11-1A (Supp. 1974).

Guidelines: Department of Environmental Protection, 1974 Informal Guidelines.

State Contact: Dr. Allyn O. Lockner, South Dakota Department of Environmental Protection, Office Building No. 2, Room 415, Pierre, South Dakota 57501 (Phone: 605-224-3351).

VIRGINIA

Source: Virginia Environmental Policy Act of 1973, Ch. 384, Laws of 1973 (approved March 15, 1973) and Ch. 774, Laws of 1972, Va. Code Ann. Sections 10-17.107 through 10-17.112, and Sections 10-177 through 10-186

(Supp. 1973), as amended by Ch. 354, Laws of 1974 (approved April 4, 1974), Va. Code Ann. Section 2.1-51.9, Section 10.181, Section 10.183, and Section 10.185.

Guidelines: Procedures Manual for Environmental Impact Statements in the Commonwealth of Virginia, issued by the Governor's Council on the Environment (December 1973; revised January 1975).

State Contact: Susan T. Wilburn, Environmental Impact Statement Coordinator, Governor's Office, Council on the Environment, Eighth Street Office Building, Richmond, Virginia 23219 (Phone: 804-770-4500).

WASHINGTON

Source: State Environmental Policy Act of 1971, Rev. Code Wash. Ch. 43.2C (Supp. 1973), as amended by Sub. Senate Bill 3277, Ch. 179, Laws of 1974 (May 5, 1974).
NOTE: For State Highway Project Environmental Impact Report Requirement see Rev. Code Wash. Ch. 47.04 (Supp. 1973).

Guidelines: Guidelines currently in use are "Guidelines for Implementation of the State Environmental Policy Act of 1971." Current guides were prepared by the Department of Ecology. Revised guides are presently being prepared.

State Contact: Peter R. Haskin, Environmental Review and Evaluation, Office of Planning and Program Development, State of Washington, Department of Ecology, Olympia, Washington 98504 (Phone: 206-753-6890).

WISCONSIN

Source: Wisconsin Environmental Policy Act of 1971, Ch. 274, Laws of 1971, adding Wisc. Stat. Ann. Ch. 1, Section 1.11, *et seq*. (Cum. Supp. 1974-1975).

Guidelines: "Guidelines for the Implementation of the Wisconsin Environmental Policy Act," issued by Governor's Executive Order No. 69 (December 1973).

State Contact: Farnum Alston, Office of the Governor, State Capital, Madison, Wisconsin 53703 (Phone: 608-266-7829).

PUERTO RICO

Source: Puerto Rico Environmental Policy Act, 12 Laws P.R. Ann. Section 1121, *et seq*. (1970).

Guidelines: "Guidelines for the Preparation, Evaluation, and Use of Environmental Impact Statements," issued by the Environmental Quality Board on December 19, 1972.

Puerto Rico Contact: Carlos M. Jimenez Barber, Executive Director, Environmental Quality Board, 1550 Ponce de Leon Avenue, 4th Floor, Santurce, Puerto Rico 09910 (Phone: 809-725-5140).

STATES WITH COMPREHENSIVE EXECUTIVE OR ADMINISTRATIVE ORDERS

MICHIGAN

Source: Michigan Executive Order 1971-10, as superceded by Michigan Executive Order 1973-9, as superceded by Michigan Executive Order 1974-4 (May 1974).

Guidelines: Interim Guidelines, prepared by the Environmental Review Board and issued June 24, 1974. Revised guidelines are presently in preparation.

State Contact: Terry L. Yonker, Executive Secretary, Environmental Review Board, Department of Management and Budget, Lansing, Michigan 48913 (Phone: 517-373-0933).

NEW JERSEY

Source: New Jersey Executive Order No. 53 (October 15, 1973).

Guidelines: "Guidelines for the Preparation of an Environmental Impact Statement," issued by the Office of the Commissioner, Department of Environmental Protection in 1973 and updated in February 1974.

State Contact: Alfred Guido, Special Assistant to the Commissioner, Office of Environmental Review, Department of Environmental Protection, P.O. Box 1390, Trenton, New Jersey 08625 (Phone: 609-292-2662).

TEXAS

Source: Policy for the Environment, adopted by the Interagency Council on Natural Resources and Environment on March 7, 1972, and published in "Environment for Tomorrow: The Texas Response." A proposed revision of the Policy was issued by the Council on March 6, 1975.

Guidelines: Guidelines and procedures are contained in "Environment for Tomorrow: The Texas Response," prepared by the Office of the Governor, Division of Planning Coordination, January 1, 1973. A proposed revision of the guidelines was issued by the Division of Planning Coordination on March 6, 1975.

State Contact: Leon Wilhite, Office of the Governor, Divison of Planning Coordination, Box 12428, Capital Station, Austin, Texas 78711 (Phone: 512-475-6156).

STATES WITH SPECIAL OR LIMITED EIS REQUIREMENTS

ARIZONA

Source: Game and Fish Commission Policy of July 2, 1971.

Guidelines: Memorandum by the Arizona Game and Fish Commission, "Requirements for Environmental Impact Statements," issued June 9, 1971.

State Contact: Robert D. Curtis, Chief, Wildlife Planning and Development Division, Arizona Game and Fish Commission, 2222 W. Greenway Rd., Phoenix, Arizona 85023 (Phone: 602-942-3000).

DELAWARE

Source: a) Delaware Coastal Zone Act, Ch. 175, Vol. 58 Laws of Del. (June 28, 1971), *adding* 7 Del. Code Ann. Section 7001 *et seq*. (Supp. 1973) and b) Delaware Wetlands Law of 1973, *adding* 7 Del. Code Ann. Ch. 66 (Supp. 1973).

Guidelines: a) 7 Del. Code Ann. Ch. 66, Section 6604 (Supp. 1973), and "Permit Application Instructions and Forms and Information Material on Required Procedures for the Coastal Zone Act," prepared and published by the Delaware State Planning Office, and b) Guidelines for the Wetlands Act are being prepared.

State Contacts: For the Coastal Zone Act -- John Sherman, Coastal Zone Administrator, State of Delaware, Executive Department Planning Office, Dover, Delaware 19901 (Phone: 302-678-4271). For the Wetlands Act -- F. Michael Parkowski, Deputy Attorney General, Department of Natural Resources and Environmental Control, Division of Environmental Control, Dover, Delaware 19901 (Phone: 302-678-4636).

GEORGIA

Source: Ga. L. 1972-179 (March 10, 1972), Ga. Code Ann. Ch. 95A-1, Section 241(e)(1) (1973).

Guidelines: *Policy and Procedures Manual: State Tollway Authority*, prepared by Georgia's Tollway Administrator's Office in May 1972 and revised in February 1973.

State Contact: Frank Harschler, Tollway Administrator, Department of Transportation, 2 Capitol Square, Atlanta, Georgia 30334 (Phone: 404-656-3915).

NEBRASKA

Source and Guidelines: Nebraska Department of Roads, *Department of Roads Action Plan* (1973). This is being rewritten to meet new directives of the U.S. Department of Transportation (FHPM 771 and 772).

State Contact: Robert O. Kuzelka, Comprehensive Planning Coordinator, Office of Planning and Programming, Box 94601, State Capital, Lincoln, Nebraska 68509 (Phone: 402-471-2311).

NEVADA

Source: Ch. 311, Laws of 1971, 58 N.R.S. Ch. 704 (1971).

Guidelines: No guidelines have been issued.

State Contact: Roger S. Toundray, Director, Department of Human Resources, 308 N. Curry Street, Carson City, Nevada 80701 (Phone: 702-885-4730).

NEW JERSEY

Source: a) Coastal Area Facility Review Act, P.L. 1973, Ch. 185 (approved June 20, 1973), N.J.S.A. 13:19-1 *et seq*. (Cum. Supp. 1974-1975), and b) the New Jersey Wetlands Act of 1970, Ch. 272, Laws of 1970, N.J.S.A. 13:9A-1 *et seq*. (Cum. Supp. 1974-1975).

Guidelines: a) "Procedural Rules for the Administration of the Coastal Area Facilities Review Act," Draft prepared by the Department of Environmental Protection dated 1974, and b) "New Jersey Wetlands Order: Basis and Background," issued by the New Jersey Department of Environmental Protection (April 1972). New guidelines for this Act are presently in the late draft stage.

State Contact: Harold Barker, Chief, Bureau of Marine Lands Management, Marine Services Division, Department of Environmental Protection, P.O. Box 1889, Trenton, New Jersey 08625 (Phone: 609-292-8262).

COMMENTS

Because the majority of state EIS requirements have been in effect for at least two years, it should now be possible to step back and examine the efficacy as well as the future of these state acts. While only one state (New Mexico) has repealed its environmental assessment law, an increasing number of states are amending their statutes or are contemplating changes. In addition, there are a few states which are having serious difficulties with implementing their existing laws.

California, Maryland, Virginia, Washington, Hawaii, Michigan, and Texas have all amended their statutes or executive orders within the past year — most of the changes have tended to increase the strength and durability of the environmental impact laws. California, for example, now requires a discussion of mitigating measures especially as they concern the wasteful and unproductive consumption of energy; the amendments to Virginia's statute provide for an Administrator to the Virginia Council on the Environment who is responsible for "developing uniform management and administrative systems which will assure coherent environmental policies and will facilitate the provision of environmental services to the public." (Chapter 354, Section 10-184.1) The State of Washington amended its State Environmental Policy Act (SEPA) to provide a "watchdog" agency -- the Council on Environmental Policy — to oversee implementation of SEPA. By revising its two previous executive orders, Michigan established an Environmental Review Board which is responsible for advising the Governor, suggesting environmental policy, conducting public hearings, and assisting the Governor in the review of state environmental impact statements. The other states made minor and/or wording changes in their statutes, leaving the basic policy goals and objectives intact.

Still other states are considering changes to their existing laws. Wisconsin, Minnesota, Texas, and New York all have reviewed or are presently reviewing legislation which would amend or establish EIS requirements. New York City and Bowie, Maryland — the two cities which require environmental assessments — have also considered new legislation.

In Wisconsin, a bill was introduced in 1974 to expand the EIS to include economic as well as environmental factors. The Texas legislature introduced a series of bills ranging from one which would establish new reviewing procedures to one which would create a stronger and more powerful Inter-Agency Council on Natural Resources and Environment. In New York a bill was introduced in the 1975 legislature which would require the preparation of EIS's for all major state actions based on NEPA procedures. The New York City Council introduced a bill which would require the environmental assessment to include energy resources, traffic patterns, and the "natural ecology." Bowie, Maryland has been seriously considering administrative and/or legislative changes, although no bills have been introduced.

While state regulation of environmental affairs is frequently difficult due to a lack of expertise and funding, the several states which have passed amendments or are considering amendments appear to be on the road toward strengthening their EIS processes. Yet there are a few states which are having serious problems with their statutes and/or with implementation.

Connecticut, North Carolina, and South Dakota all have statutory requirements dealing with the preparation of EIS's. Connecticut, however, is faced with deficiencies in the law which effectively block implementation, according to the Connecticut Department of Environmental Protection. The Department is attempting to prepare new guidelines in order to make the statute more effective, but they feel that amendments or new legislation are needed.

Similarly, the Department of Natural and Economic Resources of North Carolina feels that their Environmental Policy Act is poorly implemented, due primarily to the fact that the Department has no enforcement authority. The Department expects that the Act will most likely be renewed in 1977 when it comes up for reappraisal, but they are doubtful that the Act will be made more effective at that time.

South Dakota is the third state which is having difficulty with their Environmental Policy Act. The South Dakota Department of Environmental Protection is given no authority to enforce its standards and is presently only required to keep the EIS's received on file. While each South Dakota government agency is to compile and use its own guidelines for implementing the Act, few agencies have done so to date.

Thus, the future of state-NEPA laws seems to be mixed. While many states have been able to secure effective implementation, other states are losing ground in this area. In either case, the next years will be increasingly important in terms of state environmental policy and administration.

APPENDIX F

SECTION 201, PUBLIC LAW 92-500

(Federal Water Pollution Control Act Amendments of 1972)

Sec. 201. (a) It is the purpose of this title to require and to assist the development and implementation of waste treatment management plans and practices which will achieve the goals of this Act.

(b) Waste treatment management plans and practices shall provide for the application of the best practicable waste treatment technology before any discharge into receiving waters, including reclaiming and recycling of water, and confined disposal of pollutants so they will not migrate to cause water or other environmental pollution and shall provide for consideration of advanced waste treatment techniques.

(c) To the extent practicable, waste treatment management shall be on an areawide basis and provide control or treatment of all point and nonpoint sources of pollution, including in place or accumulated pollution sources.

(d) The Administrator shall encourage waste treatment management which results in the construction of revenue producing facilities providing for --

(1) the recycling of potential sewage pollutants through the production of agriculture, silviculture, or aquaculture products, or any combination thereof;

(2) the confined and contained disposal of pollutants not recycled;

(3) the reclamation of wastewater; and

(4) the ultimate disposal of sludge in a manner that will not result in environmental hazards.

(e) The Administrator shall encourage waste treatment management which results in integrating facilities for sewage treatment and recycling with facilities to treat, dispose of, or utilize other industrial and municipal wastes, including but not limited to solid waste and waste heat and thermal discharges. Such integrated facilities shall be designed and operated to produce revenues in excess of capital and operation and maintenance costs and such revenues shall be used by the designated regional management agency to aid in financing other environmental improvement programs.

(f) The Administrator shall encourage waste treatment management which combines 'open space' and recreational considerations with such management.

(g)(1) The Administrator is authorized to make grants to any State, municipality, or intermunicipal or interstate agency for the construction of publicly owned treatment works.

(2) The Administrator shall not make grants from funds authorized for any fiscal year beginning after June 30, 1974, to any State, municipality, or intermunicipal or interstate agency for the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works unless the grant applicant has satisfactorily demonstrated to the Administrator that --

> (A) alternative waste management techniques have been studied and evaluated and the works proposed for grant assistance will provide for the application of the best practicable waste treatment technology over the life of the works consistent with the purposes of this title; and
>
> (B) as appropriate, the works proposed for grant assistance will take into account and allow to the extent practicable the application of technology at a later date which will provide for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants.

(3) The Administrator shall not approve any grant after July 1, 1973, for treatment works under this section unless the applicant shows to the satisfaction of the Administrator that each sewer collection system discharging into such treatment works is not subject to excessive infiltration.

(4) The Administrator is authorized to make grants to applicants for treatment works grants under this section for such sewer system evaluation studies as may be necessary to carry out the requirements of paragraph (3) of this subsection. Such grants shall be made in accordance with rules and regulations promulgated by the Administrator. Initial rules and regulations shall be promulgated under this paragraph not later than 120 days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972.